

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 November 9, 2021

17 10:20 AM

18

19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ART

Page 2

1 HEARING re Order signed on 11/3/2021 Establishing Procedures
2 for Remote Hearing on Motions for Stay Pending Appeal with
3 hearing to be held on 11/9/2021 at 10:00 AM at
4 Videoconference (ZoomGove) (RDD)

5

6 HEARING re Notice of Agenda / Agenda for November 9, 2021
7 Hearing

8

9 HEARING re Motion for Stay Pending Appeal / Memorandum of
10 Law In Support of United States Trustees Expedited Motion
11 for a Stay of Confirmation Order and Related Orders Pending
12 Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007
13 (related document(s) 3777, 3776) filed by Linda Rifkin on
14 behalf of United States Trustee. (ECF #3778)

15

16 HEARING re Objection to Motion / Ad Hoc Committee's
17 Objection to Stay Motions (related document(s) 3801, 3873,
18 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein
19 on behalf of Ad Hoc Committee of Governmental and Other
20 Contingent Litigation Claimants. (ECF #4002)

21

22 HEARING re Opposition Tribal Group Joinder in Opposition to
23 Stay Motions filed by Peter D'Apice on behalf of Certain
24 Native American Tribes and Others (ECF #4003)

25

Page 3

1 HEARING re Opposition of the Official Committee of Unsecured
2 Creditors to Motions for Stay Pending Appeal (related
3 document(s) 3801, 3873, 3789, 3845) filed by Ira S.
4 Dizengoff on behalf of The Official Committee of Unsecured
5 Creditors of Purdue Pharma L.P., et al. (ECF #4006)

6

7 HEARING re Opposition The Ad Hoc Committee of NAS Children's
8 Joinder to Opposition of the Official Committee of Unsecured
9 Creditors to Motions for Stay Pending Appeal (related
10 document(s) 4006) filed by Harold D. Israel on behalf of Ad
11 Hoc Committee of NAS Babies. (ECF #4009)

12

13 HEARING re Opposition Joinder of the Private Insurance
14 Ratepayers to Opposition of the Official Committee of
15 Unsecured Creditors to Motions for Stay Pending Appeal
16 (related document(s) 3801, 3873, 3789, 3845) filed by
17 Nicholas F. Kajon on behalf of Eric, Hestrup, et al.
18 (ECF #4010)

19

20 HEARING re Opposition /Joinder (related document(s) 4006)
21 filed by Lauren Guth Barnes on behalf of Blue Cross Blue
22 Shield Association. (ECF #4011)

23

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1 HEARING re Objection to Motion /The Ad Hoc Group of
2 Individual Victims' (I) Objection to the United States
3 Trustee's and Certain Public Creditors' Motion for Stay
4 Pending Appeal and (II) Joinder in the Opposition of the
5 Official Committee of Unsecured Creditors to Motions for
6 Stay Pending Appeal (related document(s) 3873, 3972, 3789,
7 3845) filed by J. Christopher Shore on behalf of Ad Hoc
8 Group of Individual Victims of Purdue Pharma L.P.
9 (ECF #4012)

10

11 HEARING re Memorandum of Law/Debtors' Memorandum of Law in
12 Opposition to the Motions for Stays of the Confirmation
13 Order and the Advance Order Pending Appeal (related .
14 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)
15 filed by Marshall Scott Huebner on behalf of Purdue Pharma
16 L.P. (ECF #4014)

17

18 HEARING re Opposition of the MSGE Group to the Motions to
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
20 3789, 3860, 3845) filed by Kevin C. Maclay on behalf
21 of Multi-State Governmental Entities Group. (ECF #4016)
22 Opposition - Joinder to the Opposition of the Official
23 Committee of Unsecured Creditors to Motions for Stay Pending
24 Appeal (related document(s) 4006) filed by Michael Patrick
25 O'Neil on behalf of Ad Hoc Group of Hospitals. (ECF #4017)

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1 HEARING re Reply to Motion Reply in Support of United States
2 Trustee's Motion for a Stay of Confirmation Order and
3 Related Orders Pending Appeal Pursuant to Federal Rule of
4 Bankruptcy Procedure 8007 (related document(s) 3801, 3972,
5 3778) filed by Paul Kenan Schwartzberg on behalf of United
6 States Trustee. (ECF #4050)

7

8 Related Documents:

9 Order signed on 9/15/2021 Granting Motion (I) Authorizing
10 the Debtors to Fund Establishment of the Creditor Trusts,
11 the Master Disbursement Trust and Topco, (II) Directing
12 Prime Clerk LLC to Release Certain Protected Information,
13 and (III) Granting Other Related Relief (Related Doc# 3484).
14 (ECF #3773)

15

16 HEARING re Motion to Shorten Time United States Trustees Ex
17 Parte Motion For An Order Shortening Notice And Scheduling
18 Hearing With Respect To The United States Trustees Expedited
19 Motion For A Stay Of Confirmation Order And Related Orders
20 Pending Appeal Pursuant To Federal Rule Of Bankruptcy
21 Procedure 8007 (related document(s) 3 778) filed by Linda
22 Riffkin on behalf of United States Trustee. (ECF #3779)

23

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1 HEARING re Modified Bench Ruling On For Confirmation Of
2 Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021.
3 (ECF #3786)

4

5 HEARING re Findings Of Fact, Conclusions Of Law, And Order
6 Confirming The Twelfth Amended Joint Chapter 11 Plan Of
7 Reorganization Of Purdue Pharma L.P. And Its Affiliated
8 Debtors Signed On 9/17/2021 (related document(s) 3726).
9 (ECF #3787)

10

11 HEARING re Amended Motion for Stay Pending Appeal/ Amended
12 Memorandum of Law In Support Of United States Trustee's
13 Expedited Motion For A Stay Of Confirmation Order And
14 Related Orders Pending Appeal Pursuant To Federal Rule Of
15 Bankruptcy Procedure 8007 (related document(s) 3799, 3777,
16 3776, 3778, 3779) filed by Linda Riffkin on behalf of United
17 States Trustee. (ECF #3801)

18

19 HEARING re Motion to Stay/ Memorandum of Law in Support of
20 United States Trustee's Expedited Motion to Extend the
21 Automatic Stay of the Confirmation Order and for a Limited
22 Stay of the Related Orders Pending Resolution of His
23 Expedited Motion for a Stay Pending Appeal (related
24 document(s) 3786, 3787, 3773) filed by Linda Riffkin on
25 behalf of United States Trustee. (ECF #3803)

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1 HEARING re Motion to Shorten Time I United States Trustees
2 Ex Parte Motion for an Order Shortening Notice and
3 Scheduling Hearing with Respect to the United States
4 Trustee's Expedited Motion to Extend the Automatic Stay of
5 the Confirmation Order and for a Limited Stay of the Related
6 Orders Pending Resolution of His Expedited Motion for a
7 Stay Pending Appeal (related document(s) 3803) filed by Linda
8 Riffkin on behalf of United States Trustee. (ECF #3804)

9

10 HEARING re Statement/ Notice of Listen-Only Dial-in for
11 Status and Scheduling Conference (related document(s) 3779)
12 filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P.
13 (ECF #3838)

14

15 HEARING re Motion for Stay Pending Appeal / Second Amended
16 Memorandum Of Law In Support Of United States Trustees
17 Amended Expedited Motion For A Stay Of Confirmation
18 Order And Related Orders Pending Appeal Pursuant To Federal
19 Rule Of Bankruptcy Procedure 8007 (related document(s) 3801,
20 3778) filed by Brian S. Masumoto on behalf of United States
21 Trustee. (ECF #3972)

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1 HEARING re Motion for Stay Pending Appeal/ Blackline Second
2 Amended Memorandum Of Law In Support Of United States
3 Trustees Amended Expedited Motion For A Stay Of Confirmation
4 Order And Related Orders Pending Appeal Pursuant To Federal
5 Rule Of Bankruptcy Procedure 8007 (related document(s) 3972)
6 filed by Brian S. Masumoto on behalf of United States
7 Trustee. (ECF #3973)

8

9 HEARING re Objection to Motion / Ad Hoc Committee's
10 Objection to Stay Motions (related document(s) 3801, 3873,
11 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein
12 on behalf of Ad Hoc Committee of Governmental and Other
13 Contingent Litigation Claimants. (ECF #4002)

14

15 HEARING re Declaration of Cheryl Juaire in Support of the
16 Opposition of the Official Committee of Unsecured Creditors
17 to Motions for Stay Pending Appeal (related document(s) 4006)
18 filed by Ira S. Dizengoff on behalf of The Official
19 Committee of Unsecured Creditors of Purdue Pharma L.P., et
20 al. (ECF #4007)

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1 HEARING re Declaration of Kara Trainor in Support of the
2 Opposition of the Official Committee of Unsecured Creditors
3 to Motions for Stay Pending Appeal (related document(s) 4006)
4 filed by Ira S. Dizengoff on behalf of The Official
5 Committee of Unsecured Creditors of Purdue Pharma L.P., et
6 al. (ECF #4008)

7

8 HEARING re Motion to Allow/ Debtors' Motion for Leave to
9 Exceed the Page Limit in Filing Memorandum of Law in
10 Opposition to the Motions for Stays of the Confirmation
11 Order and the Advance Order Pending Appeal filed by Marc
12 Joseph Tobak on behalf of Purdue Pharma L.P. (ECF #4013)

13

14 HEARING re Declaration of Jesse DelConte (related
15 document(s) 4014) filed by Marshall Scott Huebner on behalf
16 of Purdue Pharma L.P. (ECF #4015)

17

18 HEARING re Opposition of the MSGE Group to the Motions to
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
20 3789, 3860, 3845) filed by Kevin C. Maclay on behalf
21 of Multi-State Governmental Entities Group. (ECF #4016)

22

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1 HEARING re Amended Statement Supplemental Designation of
2 Record in Rebuttal and in Support of United States Trustee's
3 Second Amended Expedited Motion for a Stay of Confirmation
4 Order and Related Orders Pending Appeal Pursuant to Federal
5 Rule of Bankruptcy Procedure 8007 (related document(s) 3972)
6 filed by Paul Kenan Schwartzberg on behalf of United States
7 Trustee. (ECF #4043)

8

9 HEARING re Motion to Allow Motion to Exceed Page Limit in
10 Filing Reply in Support of United States Trustee's Motion
11 for a Stay of Confirmation Order and Related Orders Pending
12 Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007
13 filed by Paul Kenan Schwartzberg on behalf of United States
14 Trustee. (ECF #4049)

15

16 HEARING re Motion for Stay Pending Appeal (related
17 document(s) 3786, 3787, 3773) filed by Matthew J. Gold on
18 behalf of State of Washington. (ECF #3789)

19

20 Responses Received:

21 Objection to Motion/ Ad Hoc Committee's Objection to Stay
22 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,
23 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc
24 Committee of Governmental and Other Contingent Litigation
25 Claimants. (ECF #4002)

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1

2 HEARING re Opposition Tribal Group Joinder in Opposition to
3 Stay Motions filed by Peter D'Apice on behalf of Certain
4 Native American Tribes and Others. (ECF #4003)

5

6 HEARING re Opposition of the Official Committee of Unsecured
7 Creditors to Motions for Stay Pending Appeal (related
8 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff
9 on behalf of The Official Committee of Unsecured Creditors
10 of Purdue Pharma L.P., et al. (ECF #4006)

11

12 HEARING re Opposition The Ad Hoc Committee of NAS Children's
13 Joinder to Opposition of the Official Committee of Unsecured
14 Creditors to Motions for Stay Pending Appeal (related
15 document(s) 4006) filed by Harold D. Israel on behalf of Ad
16 Hoc Committee of NAS Babies. (ECF #4009)

17

18 HEARING re Opposition Joinder of the Private Insurance
19 Ratepayers to Opposition of the Official Committee of
20 Unsecured Creditors to Motions for Stay Pending Appeal
21 (related document(s) 3801, 3873, 3789, 3845) filed by
22 Nicholas F. Kajon on behalf of Eric Hestrup, et al.
23 (ECF #4010)

24

25

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1 HEARING re Opposition /Joinder (related document(s) 4006)
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue
3 Shield Association. (ECF #4011)

4

5 HEARING re Objection to Motion /The Ad Hoc Group of
6 Individual Victims' (I) Objection to the United States
7 Trustee's and Certain Public Creditors' Motion for Stay
8 Pending Appeal and (II) Joinder in the Opposition of the
9 Official Committee of Unsecured Creditors to Motions for
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc
12 Group of Individual Victims of Purdue Pharma L.P.
13 (ECF #4012)

14

15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in
16 Opposition to the Motions for Stays of the Confirmation
17 Order and the Advance Order Pending Appeal (related
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma
20 L.P. (ECF #4014)

21

22 HEARING re Opposition of the MSGE Group to the Motions to
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
24 3789, 3860, 3845) filed by Kevin C. Maclay on behalf
25 of Multi-State Governmental Entities Group. (ECF #4016)

Page 13

1 HEARING re Opposition - Joinder to the Opposition of the
2 Official Committee of Unsecured Creditors to Motions for
3 Stay Pending Appeal (related document(s) 4006) filed by
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of
5 Hospitals. (ECF #4017)

6

7 Related Documents:

8 Modified Bench Ruling On Confirmation Of Eleventh Amended
9 Joint Chapter 11 Plan Signed on 9/17/2021. (ECF #3786)

10

11 HEARING re Findings Of Fact, Conclusions Of Law, And Order
12 Confirming The Twelfth Amended Joint Chapter 11 Plan Of
13 Reorganization Of Purdue Pharma L.P. And Its Affiliated
14 Debtors Signed On 9/17/2021 (related document(s) 3726).
15 (ECF #3787)

16

17 HEARING re Objection to Motion/ Ad Hoc Committee's Objection
18 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,
19 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of
20 Ad Hoc Committee of Governmental and Other Contingent
21 Litigation Claimants. (ECF #4002)

22

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1 HEARING re Objection to Motion I Ad Hoc Committee's
2 Objection to Stay Motions (related document(s) 3801, 3873,
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein I
4 on behalf of Ad Hoc Committee of Governmental and Other
5 Contingent Litigation Claimants. (ECF #4002)

6

7 HEARING re Declaration of Cheryl Juaire in Support of the
8 Opposition of the Official Committee of Unsecured Creditors
9 to Motions for Stay Pending Appeal (related document(s) 4006)
10 filed by Ira S. Dizengoff on behalf of The Official
11 Committee of Unsecured Creditors of Purdue Pharma L.P., et
12 al. (ECF #4007)

13

14 HEARING re Declaration of Kara Trainor in Support of the
15 Opposition of the Official Committee of Unsecured Creditors
16 to Motions for Stay Pending Appeal (related document(s) 4006)
17 filed by Ira S. Dizengoff on behalf of The Official
18 Committee of Unsecured Creditors of Purdue Pharma L.P., et
19 al. (ECF #4008)

20

21 HEARING re Motion to Allow/ Debtors' Motion for Leave to
22 Exceed the Page Limit in Filing Memorandum of Law in
23 Opposition to the Motions for Stays of the Confirmation
24 Order and the Advance Order Pending Appeal filed by Marc
25 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

Page 15

1 HEARING re Declaration of Jesse DelConte (related
2 document(s) 4014) filed by Marshall Scott. Huebner on behalf
3 of Purdue Pharma L.P. (ECF #4015)

4

5 HEARING re Opposition of the MSGE Group to the Motions to
6 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
7 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of
8 Multi-State Governmental Entities Group. (ECF #4016)

9

10 HEARING re Reply to Motion Reply in Further Support of
11 Motion of the States of Washington and Connecticut for a
12 Stay Pending Appeal filed by Matthew J. Gold on behalf of
13 State of Washington. (ECF #4051)

14

15 HEARING re Motion for Stay Pending Appeal of Confirmation
16 and Trust Advances Orders filed by Brian Edmunds on behalf
17 of State Of Maryland. (ECF #3845)

18

19 Responses Received:

20 Objection to Motion/ Ad Hoc Committee's Objection to Stay
21 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc
23 Committee of Governmental and Other Contingent Litigation
24 Claimants. (ECF #4002)

25

Page 16

1 HEARING re Opposition Tribal Group Joinder in Opposition to
2 Stay Motions filed by Peter D'Apice on behalf of Certain
3 Native American Tribes and Others. (ECF #4003)

4

5 HEARING re Opposition of the Official Committee of Unsecured
6 Creditors to Motions for Stay Pending Appeal (related
7 document(s)3801, 3873, 3789, 3845) filed by Ira S. Dizengoff
8 on behalf of The Official Committee of Unsecured Creditors
9 of Purdue Pharma L.P., et al. (ECF #4006)

10

11 HEARING re Opposition The Ad Hoc Committee of NAS Children's
12 Joinder to Opposition of the Official Committee of Unsecured
13 Creditors to Motions for Stay Pending Appeal (related
14 document(s)4006) filed by Harold D. Israel on behalf of Ad
15 Hoc Committee of NAS Babies. (ECF #4009)

16

17 HEARING re Opposition Joinder of the Private Insurance
18 Ratepayers to Opposition of the Official Committee of
19 Unsecured Creditors to Motions for Stay Pending Appeal
20 (related document(s)3801, 3873, 3789, 3845) filed by
21 Nicholas F. Kajon on behalf of Eric Hestrup, et al.
22 (ECF #4010)

23

24

25

Page 17

1 HEARING re Opposition /Joinder (related document(s) 4006)
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue
3 Shield Association. (ECF #4011)

4

5 HEARING re Objection to Motion /The Ad Hoc Group of
6 Individual Victims' (I) Objection to the United States
7 Trustee's and Certain Public Creditors' Motion for Stay
8 Pending Appeal and (II) Joinder in the Opposition of the
9 Official Committee of Unsecured Creditors to Motions for
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc
12 Group of Individual Victims of Purdue Pharma L.P.
13 (ECF #4012)

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15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in
16 Opposition to the Motions for Stays of the Confirmation
17 Order and the Advance Order Pending Appeal (related
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma
20 L.P. (ECF #4014)

21

22 HEARING re Opposition of the MSGE Group to the Motions to
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
24 3789, 3860, 3845) filed by Kevin C. Maclay on behalf
25 of Multi-State Governmental Entities Group. (ECF #4016)

Page 18

1 HEARING re Opposition - Joinder to the Opposition of the
2 Official Committee of Unsecured Creditors to Motions for
3 Stay Pending Appeal (related document(s) 4006) filed by
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of
5 Hospitals. (ECF #4017)

6

7 HEARING re Reply to Motion for a Stay of Confirmation and
8 Trust Advances Orders Pending ;I Appeal (related
9 document(s) 3801, 3973, 3873, 3972, 3789, 3778, 3860, 3803,
10 3845) filed by Brian Edmunds on behalf of State Of Maryland.
11 (ECF #4048)

12

13 HEARING re Related Documents:

14 Order signed on 9/15/2021 Granting Motion (I) Authorizing
15 the Debtors to Fund Establishment of the Creditor Trusts,
16 the Master Disbursement Trust and Topco, (II) Directing
17 Prime Clerk LLC to Release Certain Protected Information,
18 and (III) Granting Other elated Relief (Related Doc# 3484).
19 (ECF #3773)

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21 HEARING re Modified Bench Ruling On For Confirmation Of
22 Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021.
23 (ECF #3786)

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Page 19

1 HEARING re Findings Of Fact, Conclusions Of Law, And Order
2 Confirming The Twelfth Amended Joint Chapter 11 Plan Of
3 Reorganization Of Purdue Pharma L.P. And Its Affiliated
4 Debtors Signed On 9/17/2021 (related document(s) 3726).
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8 Objection to Stay Motions (related document(s) 3801, 3873,
9 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein
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11 Contingent Litigation Claimants. (ECF #4002)

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14 Opposition of the Official Committee of Unsecured Creditors
15 to Motions for Stay Pending Appeal (related document(s) 4006)
16 filed by Ira S. Dizengoff on behalf of The Official
17 Committee of Unsecured Creditors of Purdue Pharma L.P., et
18 al. (ECF #4007)

19

20 HEARING re Declaration of Kara Trainor in Support of the
21 Opposition of the Official Committee of Unsecured Creditors
22 to Motions for Stay Pending Appeal (related document(s) 4006)
23 filed by Ira S. Dizengoff on behalf of The Official
24 Committee of Unsecured Creditors of Purdue Pharma L.P., et
25 al. (ECF #4008)

Page 20

1 HEARING re Motion to Allow/ Debtors' Motion for Leave to
2 Exceed the Page Limit in Filing Memorandum of Law in
3 Opposition to the Motions for Stays of the Confirmation
4 Order and the Advance Order Pending Appeal filed by Marc
5 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

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7 HEARING re Declaration of Jesse Del Conte (related
8 document(s)4014) filed by Marshall Scott Huebner on behalf
9 of Purdue Pharma L.P. (ECF #4015)

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11 HEARING re Opposition of the MSGE Group to the Motions to
12 Stay Pending Appeal (related document(s)3801, 3873, 3890,
13 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of
14 Multi-State Governmental Entities Group. (ECF #4016)

15

16 HEARING re Motion for Stay Pending Appeal (related
17 document(s)3810, 3847) filed by Ronald Bass Sr. (ECF #3860)

18

19 HEARING re Responses Received:
20 Objection to Motion/ Ad Hoc Committee's Objection to Stay
21 Motions (related document(s)3801, 3873, 3972, 3789, 3778,
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc
23 Committee of Governmental and Other Contingent Litigation
24 Claimants. (ECF #4002)

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1 HEARING re Opposition Tribal Group Joinder in Opposition to
2 Stay Motions filed by Peter D'Apice on behalf of Certain
3 Native American Tribes and Others. (ECF #4003)

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6 Creditors to Motions for Stay Pending Appeal (related
7 document(s)3801, 3873, 3789, 3845) filed by Ira S. Dizengoff
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9 of Purdue Pharma L.P., et al. (ECF #4006)

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19 Unsecured Creditors to Motions for Stay Pending Appeal
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21 Nicholas F. Kajon on behalf of Eric Hestrup, et al.
22 (ECF #4010)

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1 HEARING re Opposition /Joinder (related document(s) 4006)
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue
3 Shield Association. (ECF #4011)

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5 HEARING re Objection to Motion /The Ad Hoc Group of
6 Individual Victims' (I) Objection to the United States
7 Trustee's and Certain Public Creditors' Motion for Stay
8 Pending Appeal and (II) Joinder in the Opposition of the
9 Official Committee of Unsecured Creditors to Motions for
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc
12 Group of Individual Victims of Purdue Pharma L.P.
13 (ECF #4012)

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16 Opposition to the Motions for Stays of the Confirmation
17 Order and the Advance Order Pending Appeal (related
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma
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24 3789, 3860, 3845) filed by Kevin C. Maclay on behalf
25 of Multi-State Governmental Entities Group. (ECF #4016)

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1 HEARING re Opposition - Joinder to the Opposition of the
2 Official Committee of Unsecured Creditors to Motions for
3 Stay Pending Appeal (related document(s) 4006) filed by
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of
5 Hospitals. (ECF #4017)

6

7 HEARING re Related Documents:

8 Modified Bench Ruling On Confirmation Of Eleventh Amended
9 Joint Chapter 11 Plan Signed on 9/17/2021.
10 (ECF #3786)

11

12 HEARING re Findings Of Fact, Conclusions Of Law, And Order
13 Confirming The Twelfth Amended Joint Chapter 11 Plan Of
14 Reorganization Of Purdue Pharma L.P. And Its Affiliated
15 Debtors Signed On 9/17/2021 (related document(s) 3726).
16 (ECF #3787)

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22 Litigation Claimants. (ECF #4002)

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2 Objection to Stay Motions (related document(s) 3801, 3873,
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein
4 on behalf of Ad Hoc Committee of Governmental and Other
5 Contingent Litigation Claimants. (ECF #4002)

6

7 HEARING re Declaration of Cheryl Juaire in Support of the
8 Opposition of the Official Committee of Unsecured Creditors
9 to Motions for Stay Pending Appeal (related document(s) 4006)
10 filed by Ira S. Dizengoff on behalf of The Official
11 Committee of Unsecured Creditors of Purdue Pharma L.P., et
12 al. (ECF #4007)

13

14 HEARING re Declaration of Kara Trainor in Support of the
15 Opposition of the Official Committee of Unsecured Creditors
16 to Motions for Stay Pending Appeal (related document(s) 4006)
17 filed by Ira S. Dizengoff on behalf of The Official
18 Committee of Unsecured Creditors of Purdue Pharma L.P., et
19 al. (ECF #4008)

20

21 HEARING re Motion to Allow/ Debtors' Motion for Leave to
22 Exceed the Page Limit in Filing Memorandum of Law in
23 Opposition to the Motions for Stays of the Confirmation
24 Order and the Advance Order Pending Appeal filed by Marc
25 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

Page 25

1 HEARING re Declaration of Jesse DelConte (related
2 document(s) 4014) filed by Marshall Scott Huebner on behalf
3 of Purdue Pharma L.P. (ECF #4015)

4

5 HEARING re Opposition of the MSGE Group to the Motions to
6 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
7 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of
8 Multi-State Governmental Entities Group. (ECF #4016)

9

10 HEARING re Motion for Stay Pending Appeal filed by Allen J.
11 Underwood on behalf of Certain Canadian Municipality
12 Creditors and Canadian First Nation Creditors (ECF #3873)

13

14 Responses Received:

15 Objection to Motion/ Ad Hoc Committee's Objection to Stay
16 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,
17 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc
18 Committee of Governmental and Other Contingent Litigation
19 Claimants. (ECF #4002)

20

21 HEARING re Opposition Tribal Group Joinder in Opposition to
22 Stay Motions filed by Peter D'Apice on behalf of Certain
23 Native American Tribes and Others. (ECF #4003)

24

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1 HEARING re Opposition of the Official Committee of Unsecured
2 Creditors to Motions for Stay Pending Appeal (related
3 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff
4 on behalf of The Official Committee of Unsecured Creditors
5 of Purdue Pharma L.P., et al. (ECF #4006)

6

7 HEARING re Opposition The Ad Hoc Committee of NAS Children's
8 Joinder to Opposition of the Official Committee of Unsecured
9 Creditors to Motions for Stay Pending Appeal (related
10 document(s) 4006) filed by Harold D. Israel on behalf of Ad
11 Hoc Committee of NAS Babies. (ECF #4009)

12

13 HEARING re Opposition Joinder of the Private Insurance
14 Ratepayers to Opposition of the Official Committee of
15 Unsecured Creditors to Motions for Stay Pending Appeal
16 (related document(s) 3801, 3873, 3789, 3845) filed by
17 Nicholas F. Kajon on behalf of Eric Hestrup, et al.
18 (ECF #4010)

19

20 HEARING re Opposition /Joinder (related document(s) 4006)
21 filed by Lauren Guth Barnes on behalf of Blue Cross Blue
22 Shield Association. (ECF #4011)

23

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1 HEARING re Objection to Motion /The Ad Hoc Group of
2 Individual Victims' (I) Objection to the United States
3 Trustee's and Certain Public Creditors' Motion for Stay
4 Pending Appeal and (II) Joinder in the Opposition of the
5 Official Committee of Unsecured Creditors to Motions for
6 Stay Pending Appeal (related document(s) 3873, 3972, 3789,
7 3845) filed by J. Christopher Shore on behalf of Ad Hoc
8 Group of Individual Victims of Purdue Pharma L.P.
9 (ECF #4012)

10

11 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in
12 Opposition to the Motions for Stays of the Confirmation
13 Order and the Advance Order Pending Appeal (related
14 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)
15 filed by Marshall Scott Huebner on behalf of Purdue Pharma
16 L.P. (ECF #4014)

17

18 HEARING re Opposition of the MSGE Group to the Motions to
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
20 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of
21 Multi-State Governmental Entities Group. (ECF #4016)

22

23

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1 HEARING re Opposition - Joinder to the Opposition of the
2 Official Committee of Unsecured Creditors to Motions for
3 Stay Pending Appeal (related document(s) 4006) filed by
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of
5 Hospitals. (ECF #4017)

6

7 HEARING re Reply to Motion Reply in Support of United States
8 Trustee's Motion for a Stay of Confirmation Order and
9 Related Orders Pending Appeal Pursuant to Federal Rule of
10 Bankruptcy Procedure 8007 (related document(s) 3801, 3972,
11 3778) filed by Paul Kenan Schwartzberg on behalf of United
12 States Trustee. (ECF #4050)

13

14 Related Documents:

15 Modified Bench Ruling On Confirmation Of Eleventh Amended
16 Joint Chapter 11 Plan Signed on 9/17/2021.
17 (ECF #3786)

18

19 HEARING re Findings Of Fact, Conclusions Of Law, And Order
20 Confirming The Twelfth Amended Joint Chapter 11 Plan Of
21 Reorganization Of Purdue Pharma L.P. And Its Affiliated
22 Debtors Signed On 9/17/2021 (related document(s) 3726).
23 (ECF #3787)

24

25

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1 HEARING re Objection to Motion/ Ad Hoc Committee's
2 Objection to Stay Motions (related document(s) 3801, 3873,
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein
4 on behalf of Ad Hoc Committee of Governmental and Other
5 Contingent Litigation Claimants. (ECF #4002)

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11 Litigation Claimants. (ECF #4002)

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23 filed by Ira S. Dizengoff on behalf of The Official
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9 of Purdue Pharma L.P. (ECF #4015)

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12 Stay Pending Appeal (related document(s) 3801, 3873, 3890,
13 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of
14 Multi-State Governmental Entities Group. (ECF #4016)

15

16 HEARING re Motion for Stay Pending Appeal filed by Ellen
17 Isaacs (ECF #3890)

18

19 HEARING re Responses Received:
20 Objection to Motion/ Ad Hoc Committee's Objection to Stay
21 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc
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25 of Multi-State Governmental Entities Group. (ECF #4016)

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23 MICHAEL ATKINSON

24 JASMINE BALL

25 BROOKS BARKER

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1 P R O C E E D I N G S

2 THE COURT: Okay, good morning. This is Judge
3 Drain. We're here in In re Purdue Pharma, L.P., et al on
4 the hearing on motions for a stay pending appeal of the
5 Court's confirmation order, as well as the Court's, what
6 I'll refer to as implementation procedures order filed by
7 the United States Trustee, the States of Washington,
8 Connecticut, and California, certain Canadian creditors, Ms.
9 Ellen Isaacs, and Mr. Ronald Bass.

10 So I believe I've reviewed all of the relevant
11 pleadings on these motions, including the various objections
12 and the replies and the declarations submitted in support of
13 the objections.

14 I'll also note my order dated November 3, 2021
15 establishing procedures for this remote hearing, which is
16 being held entirely remotely. For those participating in
17 the hearing as a movant or objectant by Zoom for Government
18 and, otherwise, by telephone.

19 So I'm happy to proceed with the motions, unless
20 there's been any development on them, which I had encouraged
21 the last time the parties were before me as a way
22 potentially to resolve these motions.

23 MR. HIGGINS: Your Honor, this is Ben Higgins for
24 the U.S. Trustee. I'm joined today by my colleague, Beth
25 Levine from the U.S. Trustee's Washington office, and she'll

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1 be handling the oral argument for the U.S. Trustee.

2 We had two housekeeping issues to flag for Your
3 Honor, but we don't have a resolution of the stay motions,
4 to answer Your Honor's question directly.

5 THE COURT: All right, very well. On the
6 housekeeping, the request to exceed page limits on various
7 pleadings?

8 MR. HIGGINS: That is the first item, yes, Your
9 Honor.

10 THE COURT: Okay. And the Debtors made such a
11 motion too. I'll grant both of those motions.

12 MR. HIGGINS: Thank you, Your Honor.

13 The second housekeeping issue, as we previewed for
14 Your Honor at the October 14 status conference, we did file
15 a amended memorandum of law at Docket No. 3972 with specific
16 citations to documents.

17 And we also, as we discussed at the October 14
18 hearing, we filed two designations at Docket Nos. 3918 and
19 4043, identifying specific documents that are either in the
20 record and that we're asking the Court to take judicial
21 notice of. We haven't received any objections, but if we
22 did, I know Your Honor raised a couple of questions at the
23 last status conference.

24 So to the extent I can clarify anything or address
25 any questions, I'm happy to do that, Your Honor.

1 THE COURT: I think you reduced the list to
2 address my concerns, which were that you were seeking that I
3 take judicial notice of matters that were not appropriate to
4 take judicial notice of, namely press accounts and the like,
5 correct?

6 MR. HIGGINS: Well, just to be clear, Your Honor,
7 the second designation was actually a supplement to the
8 first designation, so we were still asking you to take
9 judicial notice of what we listed in the first designation.
10 And I can clarify what we're seeking it for, Your Honor, and
11 you can determine if it's appropriate or not. You know,
12 we're happy to live with your decision on that.

13 THE COURT: Okay. Why don't you do that.

14 MR. HIGGINS: Sure, Your Honor.

15 So I believe the items that you raised issues
16 with, we listed some pending legislation, as well as the
17 records of some of congressional hearings concerning the
18 validity of third-party releases.

19 And we're asking you to take judicial notice
20 merely for the fact that the validity of third-party
21 releases is an issue of public interest and they're publicly
22 available documents, and we're simply asking you to take
23 judicial notice of the fact these materials exist. That's
24 the limit of it and we're willing to live with Your Honor's
25 decision either way, but that's the request, Your Honor.

1 THE COURT: Okay. Do any of the objectors have a
2 view on this?

3 MR. KAMINETZKY: Not quite sure about judicial for
4 what purpose he's offering them judicial notice. Your Honor
5 is welcome to notice that.

6 THE COURT: Okay.

7 MR. KAMINETZKY: The rest of -- what I saw most of
8 what's been submitted are various pleadings from this case,
9 we don't have a problem with that.

10 THE COURT: Right, and I have no problem with
11 those pleadings or with pleadings filed in other courts, as
12 long as they're not being -- sought to be admitted for the
13 truth of the pleadings as opposed to just the fact that
14 these are pleadings that have been filed.

15 MR. HIGGINS: And that's correct.

16 MR. KAMINETZKY: With respect to newspaper
17 accounts, I'm not sure what the point is. Is it for
18 evidentiary purposes? I'm just struggling to understand
19 what exactly the request of the Court is before we made an
20 objection or not.

21 MR. HIGGINS: Sure. I'm not sure there are any
22 newspaper accounts, Your Honor.

23 THE COURT: I don't think there are at this point,
24 and maybe there never were. I thought I saw one that you
25 had submitted, although they were included, I believe, in

1 the record of the hearing.

2 I will take judicial notice of the bill and the
3 hearing for the fact that they took place, not for anything
4 as far as the hearing is concerned that any other
5 evidentiary purpose or for which they might be asserted.

6 MR. HIGGINS: Thank you, Your Honor. Those are
7 the housekeeping issues from the U.S. Trustee's perspective.

8 THE COURT: Okay, very well.

9 MR. EDMUNDS: Your Honor, Brian Edmunds for
10 Maryland. I don't -- it may be helpful if I address a
11 threshold issue from our reply first. I think the Court
12 will probably want to hear what everyone has to say anyway.

13 But logically, the one issue which is the effect
14 of the District Court's decision on the Trustee's and
15 Canadian entities' motion for a stay in that Court limits, I
16 think, what is before the Court today.

17 Because there's a clear ruling, an unappealed
18 ruling, a ruling, in fact, that the appellees acquiesced
19 from the District Court that holds that there's a likelihood
20 of success on the merits and that the issue raised by the
21 Trustee, which is the issue of equitable mootness, raises
22 when the Debtors or appellees are actually doing something
23 that the balance of hardships would tip decidedly in the
24 Trustee's and the Canadian entities' favor.

25 And so, there's a finding, and there's a finding

1 that in the end denies those parties' motion for a stay
2 because the District Court found that there's nothing going
3 on right now. But you found that without prejudice to the
4 states making motions and to the U.S. Trustee coming forward
5 with evidence that something is happening now. So it's
6 without prejudice to that showing or to those showings, and
7 she does not decide the states' motions, which had not been
8 formally brought before her.

9 But to the extent she rules on that equitable
10 mootness issue and addresses the likelihood of success on
11 the merits is raised in the other parties' motions before
12 that Court, those findings are her decision. And I'm not
13 sure that, you know, there's any -- they could have
14 appealed, but I think that they become law of the case in
15 light of the fact that they haven't.

16 And they've, in fact, filed a stipulation in the
17 District Court essentially doing -- purporting to comply
18 with the conditions that the District Court placed in its
19 denial of the stay, so that issue, I think, is the threshold
20 matter.

21 And I understand the Court is likely to hear
22 everybody, but just as a logical matter, it seemed important
23 to raise that first.

24 THE COURT: I'm looking for my copy --

25 MR. EDMUNDS: Your Honor, if it's helpful --

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1 THE COURT: I'm looking for that copy of that
2 order. This was an issue that really was, if anything,
3 touched on in a reply, so you've caught me a little bit
4 unprepared on this, Mr. Edmunds, but I want to get out the
5 order.

6 MR. EDMUNDSD: I'm sorry, Your Honor. I mean, we
7 filed our motion before we were in the District Court.

8 THE COURT: I know.

9 MR. EDMUNDSD: But if you need the opinion --

10 THE COURT: I'm not faulting you for not raising
11 it when you did then, but I want to make sure I have Judge
12 McMahon's order in front of me, which I am leafing through.
13 Well, here it is. I found it.

14 MR. EDMUNDSD: I think it might be attached to our
15 reply as an exhibit. If it's helpful, Your Honor, I think
16 the relevant language --

17 THE COURT: No. I'm reading -- let me read it --

18 MR. EDMUNDSD: Okay.

19 THE COURT: -- as to the points that you're
20 specifically raising.

21 MR. EDMUNDSD: Sure.

22 THE COURT: Well, again, I've just reread it. And
23 on the two points that you've raised, Mr. Edmunds, that you
24 say would be law of the case, the first one is whether the
25 merits prong has been satisfied. And there, Judge McMahon

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1 says, "In this case, Debtors conceded at oral argument on
2 October 12 the existence of sufficiently serious questions
3 going to the merits to make them a fair ground for
4 litigation."

5 The other point that you raised, however, as far
6 as the possibility of equitable mootness is in the context
7 of the balance of hardship and not as to a finding as to
8 whether equitable mootness has risen above the level of
9 speculation.

10 So I think it's a little more -- maybe I didn't
11 hear you clearly enough, but I think it's a little more
12 complicated than you stated. I think that issue of
13 irreparable harm and its relation to equitable mootness and
14 the issue of the balance of the harms and its relation to
15 equitable mootness are not exactly the same issue. And
16 secondly, I think they're both quite context specific as far
17 as the record before the Court.

18 The case law seems to be uniform that the risk of
19 equitable mootness -- and of course, that's an evaluation
20 that the Court needs to make and that clearly is not law of
21 the case as far as Judge McMahon's order -- standing alone
22 or vel non is not irreparable harm or arguably harm but
23 needs to be taken into account with other factors.

24 So it seems to me that the record before me is
25 important still on that point.

1 If the objectors are arguing that the risk of
2 equitable mootness just isn't to be taken into account, I
3 completely agree with you; in fact, I wouldn't need Judge
4 McMahon's ruling because it is to be taken into account.
5 But I don't think it's dispositive on this point, given the
6 different record before her and before me.

7 So I think the thing we should probably focus on,
8 although I'm happy to hear you more on this, is the effect
9 of the Debtors' concession. I mean, both -- not both -- all
10 parties have spent a considerable amount of time,
11 notwithstanding that concession, arguing the merits of the
12 appeal, both in the motions themselves, which again I
13 repeat, were made before the hearing before Judge McMahon,
14 but also in the replies.

15 So I was going to suggest to the parties that they
16 spend the vast bulk of their time not addressing the merits,
17 but rather, addressing the other three factors and the bond
18 issues. But why don't I hear from the objectors on the
19 merits point in the first case as to whether their
20 concession should be viewed as a concession for this hearing
21 as well.

22 MR. EDMUNDS: Sure, Your Honor. Let me just --
23 you've read it the same way, I think, we have, which is that
24 there is a fact issue on the balance of hardships and that
25 the question of whether, you know, the possibility of

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1 equitable mootness vel non is a, you know, irreparable harm
2 question, is decided by her and that equitable mootness
3 could pose irreparable harm, but the fact issues are still
4 left open as to what's happening now.

5 So I think -- I'm not saying -- I wasn't saying
6 anything different and I think that we've read it the same
7 way.

8 THE COURT: Well, maybe with one qualification,
9 Mr. Edmunds. Based on my review of the case law, and I
10 don't think Judge McMahon is saying anything different, the
11 weight to be given to the risk of equitable mootness
12 constitute two ways: first, the way that we clearly agree
13 on, which is the Court needs to evaluate how likely it is
14 that something would become equitably moot; the second is
15 whether -- and this second point is very closely tied to the
16 first point -- I think the more likely it is that something
17 becomes equitably moot, the less important it is to
18 establish something in addition to the risk of mootness.

19 And nevertheless, I do think that is a second
20 inquiry because I believe all the courts, including the
21 Adelphia court and St. Johnsbury Trucking court have said
22 standing alone, the risk of equitable mootness isn't enough.
23 But what needs to be shown, in addition to that, can be any
24 one of the other factors, it seems to me. It can be the
25 seriousness of the issues on appeal; it can be the issue of

1 whether a reversal as appear at victory.

2 You know, there are all sorts of things that can
3 affect that extra something that I think all the courts
4 recognize you need to have in addition to just the risk of
5 equitable mootness. And again, that can be merely the
6 seriousness of the issues on appeal, and also, the courts'
7 assessment of the likelihood of success on appeal. If
8 something really does seem to be maybe not a frivolous
9 appeal, but a real long shot, then the risk of mootness
10 really doesn't seem to be something that courts care about.

11 So I think I may go back again to the question,
12 which is the -- my recommendation was that we not spend a
13 lot of time on the merits of the appeal, showing of the
14 substantial possibility of success, and really only as it
15 pertains to the other three issues.

16 So Mr. Kamenetzky's on the screen. I know there
17 are other objectors too, but I'll look to you on that point.
18 You're on mute.

19 MR. KAMINETZKY: Your Honor, good morning.
20 Benjamin Kaminetzky of Davis Polk for the Debtors.

21 I could just address the effect of Judge McMahon's
22 order, the kind of contention by Maryland that there's some
23 sort of law of the case or issue preclusion because I think
24 that's just completely inherently wrong. If you want, I can
25 go further, but I just think it's important that we address

1 that upfront because Mr. Edmunds suggested something that
2 just, it's just completely and utterly false. If I could
3 get two minutes on that.

4 And then, you know, I assume you'd want them to go
5 first on the other factors. And I agree that spending a lot
6 of time on probability of success on the merits, which is
7 devolved into another oral argument that you've heard for
8 hours now, are so -- on the point, just Mr. Edmunds point.
9 Again, it's just a blatant mischaracterization of Judge
10 McMahon's decision and what happened. So let me just give
11 you some context.

12 The U.S. Trustee filed an emergency stay motion
13 before the District Court on the evening of Friday, October
14 8th. After entering a TRO based on the U.S. Trustee's
15 breathless suggestion that something could be happening over
16 the weekend, Judge McMahon heard that motion the very next
17 business day without a single brief from the Debtors or any
18 other party.

19 We had no opportunity -- the Debtors and the plan
20 proponents had no opportunity to put in any evidence at the
21 hearing. All the District Court had was the brief that the
22 U.S. Trustee filed in connection with its Friday night
23 emergency motion, had no evidence from anyone else, no
24 briefs from anyone else. They didn't even have the
25 confirmation hearing transcripts or anything.

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1 What Judge McMahon focused on at this emergency
2 hearing that was held, you know, that Tuesday, which was the
3 next business day, was -- and the Debtors and the plan
4 proponents didn't present any argument whatsoever on the
5 likelihood of success of the appeal. The focus was solely
6 on whether the movant's evidence might suffer harm in the
7 interim period between that day and today when Your Honor
8 will be hearing the stay motion.

9 All of that notwithstanding, the District Court
10 denied the U.S. Trustee's stay motion the next business day,
11 as she concluded that the movants had not identified any
12 concrete harm that will arise between now and November 9
13 when Judge Drain is scheduled to consider the various stay
14 motions. That's on Page 12 of her decision.

15 Now, the notion --

16 THE COURT: Okay, so could I just interrupt you?
17 So you're basically saying that your concession that Judge
18 McMahon's decision refers to was really just a concession
19 for purposes of that hearing because you were focusing on
20 the --

21 MR. KAMINETZKY: It wasn't even that. Judge
22 McMahon misheard. She didn't have the transcript. What Mr.
23 Huebner said is even if we give them all three other
24 factors, they nevertheless lose because there's no harm.
25 There was a hypothetical which he misheard. We corrected

1 her in a subsequent filing and said, no, we've reviewed the
2 transcript. It was one of these even if they're right that
3 there are substantial issues, there's no harm because
4 nothing would happen between now and November 9, so it was
5 kind of in that context.

6 And Judge McMahon, as you said, there was a
7 concession, but there actually wasn't; it wasn't in the
8 context of an even if they could prove all three other
9 factors, they certainly can prove imminent harm. And again,
10 we corrected her on the record. We sent a letter
11 identifying and pointing that out in the transcript.

12 But more important, the law is very clear what
13 collateral estoppel means and it doesn't mean. And, I mean,
14 Second Circuit law here is well developed: Collateral
15 estoppel only applies if the identical issue was decided in
16 the prior proceeding. And none of the issues, Your Honor,
17 none of the issues before the Court today was actually
18 decided by Judge McMahon.

19 Again, what she was focused on, based on the U.S.
20 Trustee's emergency motion, is do I need to do something now
21 before the November 9 hearing before Judge Drain, and she
22 said no, but that was the entire focus of the hearing. And
23 as Your Honor knows, nothing could possibly have happened
24 because the sentencing needs to happen and the effective
25 date and all that.

1 So there was absolutely no ruling whatsoever on
2 the balance of harm with respect to an indefinite stay,
3 which the movants are seeking, or even any sort of stay
4 beyond November 9.

5 There's also -- you know, we talked about that
6 there wasn't a concession. There's also collateral estoppel
7 only applies where there's a full and fair opportunity to
8 litigate the relevant issues in the first proceeding, and
9 I'm quoting from Central Hudson Gas & Electric Company, 56
10 F.3d 359 at 368. Obviously, when on an emergency motion
11 filed on Friday night when we're imminent on Tuesday
12 morning, was obviously not a full and fair opportunity to
13 litigate. So even if it was the same issue, they still
14 don't get collateral estoppel because the Judge only heard
15 one side; there was no ability to submit evidence.

16 And finally, Your Honor, it's blackletter law that
17 collateral estoppel only applies where there was a final
18 judgment on the merits. And to say this again, this was a
19 decision on a TRO on a stay motion, not a final judgment on
20 the merits, and it cannot give rise to collateral estoppel.

21 And, of course, neither the two cases that
22 Maryland cites in its brief has anything remotely to do with
23 the preclusive effect of a decision on emergency stay
24 motion. They both involve prior actions that were litigated
25 to a final judgment on the merits. In the PCH case that

1 they cite, there was a final and binding decision on the
2 merits and affirmed on appeal that the relationship between
3 parties was a joint venture and the Court found that that
4 was law of the case. And in the other case they cite, the
5 Central Hudson case, there was a trial and a judgment and
6 that's when the Court held that there was a collateral
7 estoppel.

8 So, I mean, I think it speaks volumes that the
9 actual movants before the District Court didn't even dare
10 make this argument that there's some collateral estoppel
11 effect of Judge McMahon's decision. And I see why now
12 people are -- I mean, it's clear why now, because this is
13 such a, quite frankly, bizarre argument that somehow on a
14 TRO emergency motion that there's some sort of binding
15 decision that's law of the case that prevents Your Honor
16 from making his own determination I think is just completely
17 and utterly wrong.

18 And I'll stop now because I don't want to, again,
19 step on anyone's toes.

20 THE COURT: Okay, all right. Well, I think you've
21 addressed the point I really wanted you to address, which is
22 what sort of concession was referred to in that order, and I
23 think I have the context here in any event. I don't believe
24 it was a concession, other than for purposes of that
25 argument and not for purposes of this argument.

1 Although that being said, it appears to me that
2 the parties should primarily focus on the other three
3 factors for obtaining a stay pending appeal and assume that
4 I've reviewed their arguments with respect to the
5 substantial possibility of success on the merits and still
6 remain fully aware of how I addressed those issues in my
7 decision.

8 MR. EDMUNDS: Your Honor, may I respond briefly?

9 THE COURT: Well, I don't think there's -- I think
10 I've already given my view on this, and I don't think
11 there's any other thing to say on it. I mean, I'm not sure
12 there's anything more to be said on it really, unless you
13 say that somehow that they did concede for all time.

14 MR. EDMUNDS: I don't think it matters whether
15 it's a concession. I think the District Court made a ruling
16 on the issue, and it made a determination as to likelihood
17 of success on the merits and it said that it was not going
18 to allow the appeal to come equitably mooted.

19 THE COURT: Clearly, the order doesn't say that.
20 It says the Debtors concede, and the only issue is whether
21 they conceded for purposes of that argument or for all time,
22 and I'm satisfied that they did not concede for all time
23 because I can't imagine they would in that context. There's
24 no ruling on the likelihood of the merits, no discussion on
25 the likelihood of the merits here.

1 MR. EDMUNDS: But I would just say we respectfully
2 disagree, reading the entire opinion that she didn't. But I
3 understand Your Honor's ruling.

4 THE COURT: Okay.

5 MR. EDMUNDS: I don't need to say more I guess.

6 THE COURT: Okay.

7 MR. EDMUNDS: All right. Thank you, Your Honor.

8 THE COURT: All right. Okay, so I do have a
9 suggestion for structuring this argument beyond what I've
10 already said, which is I want the parties to focus on what
11 sort of stay they are seeking in terms of duration and
12 activity, and also address it in the light of Bankruptcy
13 Rule 8025.

14 The parties -- the U.S. Trustee has thrown out
15 different alternatives, which includes a stay that would be
16 ordered by me for a relatively brief period after the
17 District Court's ruling.

18 It's not clear to me whether the three states have
19 limited their request for a stay in any way or whether
20 they're seeking a stay by me that would go through
21 ultimately a final order, which could conceivably be either
22 denial of certiorari or a ruling by the Supreme Court.

23 And I think this is important in the context again
24 of Bankruptcy Rule 8025, which is titled, Stay of a District
25 Court -- or BAP, but the focus here's on the District Court

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1 of course -- Judgment, which states in (a): "Unless the
2 District Court orders otherwise, its judgment is stayed for
3 14 days after entry." And I'll also note in that regard (c)
4 of Rule 8025, which says that if the District Court enters a
5 judgment affirming an order of judgment or a decree of the
6 Bankruptcy Court, a stay of the District Court's judgment
7 automatically stays the Bankruptcy Court's order, judgment,
8 or decree for the duration of the appellate stay.

9 And then Rule 8025(b) states, is headed for a stay
10 pending appeal to the Court of Appeals and states in (1) in
11 general: "When a party's motion and notice to all other
12 parties to the appeal, the District Court may stay its
13 judgment pending an appeal to the Court of Appeals." In
14 (2), it says, "Time limit. The stay must not exceed 30 days
15 after the judgment is entered, except for cause shown," and
16 then it says, "Stay continued if before a stay expires. The
17 party who obtained the stay appeals to Court of Appeals, the
18 stay continues until final disposition by the Court of
19 Appeals."

20 And then finally, (d) states: "This rule does not
21 limit the power of the Court of Appeals or any of its judges
22 to do the following, including: a stay; stay proceedings
23 while an appeal is pending; suspending, modifying, restore,
24 vacating, or granting a stay while an appeal is pending; or
25 issue any order appropriate to preserve the status quo or

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1 the effectiveness of any judgment to be entered."

2 So clearly, appeals from Bankruptcy Court orders
3 should generally and ordinarily be, where there's a motion
4 seeking a stay, that motion should be brought first in the
5 Bankruptcy Court, and courts regularly deny such motions if
6 they are not brought first in the Bankruptcy Court unless
7 there's a legitimate reason to do so. But 8007 pertains to
8 a motion for a stay of a judgment, order, or decree of the
9 Bankruptcy Court pending appeal.

10 So I have a serious concern that any request for a
11 stay pending appeal beyond the District Court's ruling is
12 not really properly before me or it shouldn't be decided by
13 me -- maybe that's a better way to phrase it -- given Rule
14 8025.

15 So let me first ask, is anyone looking for relief
16 beyond a stay up to the time that the District Court rules?

17 MS. LEVINE: Your Honor, this is Beth Levine for
18 the United States Trustee.

19 We have asked for relief beyond that. We think,
20 as we argued in our papers, that this Court has the
21 authority, both under Rule 8007 and its inherent authority
22 to control its docket, to stay its own orders, to enter a
23 stay pending a conclusion of the appellate process, so we
24 have asked for that full relief of a stay pending the
25 conclusion of the appellate process or, in the alternative,

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1 pending the District Court's decision. So we have asked for
2 that additional relief.

3 THE COURT: Right. Although I don't think you
4 addressed Rule 8025 or the case law interpreting it.

5 MS. LEVINE: Your Honor, I think we addressed the
6 language if 8025, which is different. You know, Rule 8007
7 does not have the limiting language that refers to the
8 duration of the stay that Rule 8025 does. 8025 refers to
9 the District Court's stay of another court, the Bankruptcy
10 Court's order, which I think is a somewhat different thing
11 than a Bankruptcy Court staying its own order, and that
12 you've got that discretion to stay your own order pending
13 the appeals.

14 Certainly, you've got the discretion to determine
15 how long that stay should be, but we are asking for that
16 stay for the full duration of the appellate process, with
17 the alternative request for a stay at least until the
18 District Court has made its decision.

19 THE COURT: Okay.

20 MS. LEVINE: Your Honor, would you like me to
21 proceed with our motion now or to hear from others on that
22 at this point?

23 THE COURT: Well, let me just make sure, as far as
24 the three states are concerned, are you looking for a stay
25 through the entire course of any appellate process?

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1 MR. EDMUNDS: Maryland is, Your Honor, and we'd
2 agree with what Ms. Levine just argued.

3 THE COURT: Okay.

4 MR. GOLD: Your Honor, Matthew Gold from Kleinberg
5 Kaplan representing State of Washington and Connecticut.

6 We agree with what Ms. Levine said, our original
7 requests, so that there was no question was for the broader
8 stay. But our alternative position minimum, if you would,
9 is that we have a stay that preserves the status quo and
10 leaves the positions intact so that it can be decided by the
11 District Court or any higher Court when the issue gets put
12 to them.

13 THE COURT: Okay.

14 MR. ESKANDARI: Bernie Eskandari on behalf of
15 California, Your Honor. I may have misheard at the
16 beginning of the hearing, you included California with --

17 THE COURT: No. If I did, it was a mistake.

18 MR. ESKANDARI: Thank you.

19 THE COURT: It's just Washington and Connecticut
20 and Maryland. Sorry to give you a heart attack there.

21 MR. GOLDMAN: Your Honor, if I may add -- Irv
22 Goldman, Pullman & Comley, for the State of Connecticut.

23 Just to note, Bankruptcy Rule 8007 does embrace
24 motions not only to the Bankruptcy Court but to the District
25 Court, so I would contend it does contemplate a stay pending

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1 appeal through the Circuit. And there's no limiting
2 language in Bankruptcy Rule 8000(a)(1)(A) as to what is
3 meant by pending appeal, so it's open ended. I would just
4 add that point.

5 THE COURT: Okay. Well, I will note that there
6 are a number of decisions that rule otherwise, including In
7 re Russo, 2017 B.R. Lexis 544 at 5-6 (Bankr. C.D. Cal., Feb.
8 27, 2017), In re VCR I, LLC 2019 B.R. Lexis 3376 at 27
9 (Bankr. S.D. Miss., Oct. 28, 2019), and In re Schupbach
10 Investments, LLC 2016 B.R. Lexis 836 at 5-6 (Bankr. D.
11 Kans., March 17, 2016), In re Howell-Robinson, 2008 WL
12 5076975 at 2 (Bankr. D.D.C. July 30, 2008), and Culwell v.
13 Texas Equipment Co. (In re Texas Equipment Co.) 283 B.R.
14 222, 230-31 (Bankr. N.D. Texas 2002).

15 I will note that Judge Roman in this District left
16 the issue open in Credit One Bank, N.A. v. Anderson (In re
17 Anderson) 560 B.R. 84, 88 (S.D.N.Y. 2016). Although rather
18 than the Bankruptcy Court decide the motion, which was made
19 to him, in the alternative under either 8007 or 8025, he
20 decided the motion himself under 8025 after his ruling and
21 denied the motion on the merits for a stay.

22 But I think it's important, and I believe it's
23 consistent actually with Judge McMahon's approach, for the
24 parties to focus on the two alternative forms of stay that
25 the parties are seeking here: their preferred one, which is

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1 through the entire appellate process, and alternatively,
2 through the District Court's ruling.

3 Because the determination of the issues and, in
4 particular, the three factors other than on the merits, to
5 my mind, could be quite different depending on whether it's
6 a stay through the District Court's ruling or a stay through
7 either denial of cert or a ruling by the Supreme Court,
8 which obviously would take a significantly longer amount of
9 time.

10 And on the merits issue, obviously a trial judge
11 that is faced with a request for a stay pending appeal is
12 always in the awkward position of evaluating the merits of
13 the trial judge's own opinion -- that isn't a problem for
14 the District Judge -- and makes that review, I think, much
15 more, in some ways at least, if on a psychological basis,
16 more meaningful.

17 So I really do want the parties to focus on those
18 two different durations for a stay, and so, you should
19 address your arguments accordingly.

20 So I don't know if you decided who was going to go
21 first, whether it's Ms. Levine or counsel for one of the
22 three states, but one of you should go ahead.

23 MS. LEVINE: Your Honor, I'm ready to proceed.
24 Thank you. This is Beth Levine again with the Department of
25 Justice for the United States Trustee.

1 I'll save my introductory remarks. You know why
2 we're here. I will skip over much on the likelihood of
3 success on your direction.

4 I wanted to say one thing, which is that Judge
5 McMahon in Footnote 4 on Page 10 of her decision, you know,
6 said that she considered it obvious that there are serious
7 questions going to the merits and making the fair ground for
8 litigation. We think that is true.

9 You know, certainly, we don't expect you to agree
10 that you've erred. We know you disagree with our legal
11 position. But we think there are very serious questions and
12 that they merit appellate review and that the denial of that
13 appellate review, if there were a dismissal based on
14 equitable mootness, would be irreparable harm.

15 And it's not just the denial of appellate review
16 vel non itself; it's because you have claims here that are
17 being eliminated without consent that would be permanently
18 irreparably gone without that appellate review.

19 THE COURT: Well, can we focus on that for a
20 second? First, you went -- and I'm responsible for this
21 since I told the parties not to focus substantially on the
22 merits -- you went very quickly from that to the issue of
23 irreparable harm.

24 And I just -- I want to be upfront with everyone.
25 It seems to me that there are, in fact, issues going to the

1 merits that are somewhere between, you know, a mere
2 possibility of success and a probability of success. I
3 think many of the issues raised by the U.S. Trustee and the
4 three states do not fall into that category; that, in fact,
5 they are unlikely to prevail on appeal. Those go to the
6 524(e) point, the due process point, and their assessment of
7 the merits of the settlement.

8 But I agree that the issue of a release of third-
9 party claims is, in every instance, a serious issue that
10 requires a Court to sift through complicated legal and
11 factual considerations. And the limits, in particular, on
12 what types of claims that would belong to a third party,
13 i.e., not the Debtors' estate, that can be appropriately,
14 legally enjoined requires serious parsing of the case law
15 and is certainly something that even the Second Circuit case
16 law recognizes as an issue where the lower court can get it
17 wrong, as was the case in Metromedia and Carter and other
18 decisions which recognize the underlying principle that the
19 Court has power to enjoin third-party claims. But drawing
20 the line as to what claims can be enjoined and what can't is
21 something that courts can well disagree on.

22 So on that point -- unlike on the due process, the
23 jurisdictional points, the 524 point, frankly, even the
24 state sovereignty point, all of which I think are unlikely
25 to prevail on appeal -- this issue as to how released claims

1 are to be cabined is, I believe, one that does satisfy the
2 requirement to show a strong showing of likelihood to
3 succeed on the merits, such that there's a fair ground for
4 litigation.

5 Although again, as recognized, for example, by
6 Judge Chapman in *In re Sabine Oil & Gas Corp.*, 551 B.R. 132,
7 143 (Bankr. S.D.N.Y. 2016), the focus on the degree of
8 likelihood of success is tempered by the balance of the
9 harms or the Court's assessment of the balance of the harms.

10 So I suppose the objectors can try to persuade me
11 to the contrary, but I think that I want to turn then to the
12 irreparable harm point that you were starting to make. And
13 the argument you made is that the people and governmental
14 entities that objected to the release or injunction would
15 lose their rights if a stay was not granted.

16 And again, this goes to my direction to you all to
17 focus on the two different times for the stay. I confess
18 I'm having a hard time seeing how that would be the case if
19 the stay were granted or not granted either way through the
20 date of the District Court's ruling with the additional 14
21 days that are added on under Rule 8025.

22 And further, I'm having a hard time, although
23 maybe not as hard, with the argument that equitable mootness
24 really would occur here if a stay were not granted through
25 the date of the entire appellate process. I guess that

1 depends, in some measure, upon whether the plan is
2 substantially consummated.

3 But as far as the release is concerned, the
4 majority of the payments by the released parties, as you
5 yourself point out, occurs substantially down the road, and
6 under the plan, they have a credit only for what they've
7 paid in the interim.

8 So it seems to me under either scenario too broad
9 to say that these people who the U.S. Trustee says that he's
10 speaking on behalf of would lose their rights. They would
11 only lose it if there's equitable mootness, right?

12 MS. LEVINE: Your Honor, that is the primary
13 concern, that is if there is equitable mootness and there's
14 not a review on the merits, they would lose their rights
15 that would otherwise --

16 THE COURT: Well, there's no other concern, right?
17 I mean, it's just based on equitable mootness, nothing else.

18 MS. LEVINE: Your Honor, I think there's also a
19 concern about what's going to happen in the interim is, you
20 know, defendants' move to dismiss based on these releases,
21 for example. As noted in our brief and one of the cases
22 that's pending, one of the defense had suggested that the
23 releases apply. This was prior to the Court's decision, so
24 it was a different context. But we don't know how that
25 would play out and whether cases would be dismissed with

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1 prejudice in the intervening time, so I think there is that
2 risk. But our primary concern is the equitable mootness
3 risk that would make it irreparable if there's no longer a
4 possibility of review on the merits.

5 THE COURT: So there are -- but that wouldn't
6 really happen until the effective date of the plan, right?

7 MS. LEVINE: Your Honor, it's my understanding
8 that the releases become effective on the effective date.

9 THE COURT: Right.

10 MS. LEVINE: So what we want to avoid happening --
11 but if the appeals dismissed without a review on the merits,
12 that effective date is going to come and go, and the Debtors
13 have --

14 THE COURT: But I'm asking you to focus on that if
15 and how likely that's to happen.

16 MS. LEVINE: Yes, Your Honor. So focusing first
17 on the timing of the District Court's decision, Your Honor.
18 Under the plan -- well, first of all, they've argued that
19 it's not just the effective date that may cause equitable
20 mootness. They have very specifically preserved their
21 rights to argue that the criminal sentencing, which will
22 happen before the effective date, can be a basis for
23 equitable mootness.

24 THE COURT: What do we think about that? I mean,
25 that's under a separate plea agreement; that's not under the

1 plan.

2 MS. LEVINE: Your Honor, it obviously raises a
3 concern because they've indicated they're going to argue it.
4 But our concern is also, you know, they've said nothing else
5 that's happening before the effective date can constitute
6 equitable mootness, and we've got two concerns about that,
7 Your Honor. One is, as we've stated, you know, their
8 stipulation about that doesn't bind the Second Circuit, it
9 doesn't bind other parties.

10 We've had other parties that haven't signed the
11 stipulation that have filed oppositions to motions to stay.
12 We've asked multiple times what's happening. We haven't
13 gotten a response. So we don't know what's going on that
14 someone else might look to and say, you know, is the basis
15 of an equitable mootness argument.

16 But the other thing we're concerned about, Your
17 Honor, is --

18 THE COURT: But how could any of those things --
19 I'm sorry to interrupt you. But how could any of those
20 things be substantial consummation?

21 MS. LEVINE: Your Honor, I don't think there'll be
22 substantial consummation, but under Second Circuit law, the
23 test is a substantial or comprehensive change in
24 circumstances. And, you know, clearly, the Debtors think
25 that something can happen before substantial consummation

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1 that would support equitable mootness because they said they
2 might argue that based on sentencing.

3 And the concern, Your Honor, is it may be that,
4 you know, they have said they've structured this so that
5 they have time between the confirmation and the sentencing
6 to get certain things done, that they want to get certain
7 things done before they are sentenced. We don't have
8 clarity on what those things are.

9 But we don't know, you know, what pre-effective
10 date activity is going to open the door to sentencing or
11 pre-effective date activity they're going to say is well,
12 you know, say it's transferring assets to NewCo.

13 Transferring assets to NewCo on its own, they might say,
14 well, that can be undone. But then after we get past
15 sentencing, we don't know what their argument is. Is it
16 going to be that well, now that it's been sentenced, that
17 asset transfer can't be undone?

18 So we don't really know how these things interplay
19 together, which makes us very concerned about when, you
20 know, not just the effective date, but also the sentencing.
21 And also what else is happening and how those things work
22 together so that if we get past sentencing, they're going to
23 come back and say, oh, well, you know, this other pre-
24 effective date activity on its own could be reversed, but
25 now it can be undone. Now that bell cannot be unrung.

1 And so, for all these reasons, we have concerns
2 about these other activities.

3 THE COURT: But look, the presumption of equitable
4 mootness, which is when their five-step case in the Second
5 Circuit case law comes into effect, is where the plan has
6 been substantially consummated. Generally, courts focus on
7 the distributions under the plan as that, or transfers to be
8 made under the plan that cannot be unwound.

9 So far, I'm just hearing sort of vague fears, as
10 opposed to anything that actually would give rise to any
11 real risk at all of equitable mootness.

12 MS. LEVINE: Your Honor, we think it's a
13 substantial risk because of what the Debtors have said
14 regarding the impact of sentencing, but we also think that
15 the dates here --

16 THE COURT: Let me -- I mean, Judge Kaplan dealt
17 with this head on in the St. Johnsbury case. He says to
18 begin with, the government's failure to concede that its
19 appeal would be moot absent a stay does not help those
20 opposing the motion any more than the opponents' failure to
21 concede that the appeal would not be so moot it harms them.

22 Mootness is a doctrine grounded in constitutional
23 considerations designed to limit courts to the resolution of
24 actual controversies, although I think the case law has
25 moved on since then and the focus is really, for equitable

1 mootness purposes, on the finality of bankruptcy plans.

2 And then he says the parties through additional
3 proceeding, therefore, cannot determine even by agreement
4 whether a case is moot; that is for the Court.

5 But again, we're talking about equitable mootness.
6 I don't think there's any argument that there would be
7 constitutional mootness here, absent probably well after the
8 effective date. But as far as equitable mootness is
9 concerned, I'm just not seeing it.

10 I mean, again, the case law in the Second Circuit
11 focuses on the five-step test where a plan has been
12 substantially consummated. Other circuits focus on simply
13 whether third parties' expectations, i.e., parties who are
14 not parties to the appeal or on either side of the contested
15 issues, would be so harmed that the Court would not exercise
16 what it otherwise has, which is an unflagging duty to
17 exercise its jurisdiction. And I just... I mean, how would
18 you undermine the plan by invoking equitable mootness for
19 things that were done before substantial consummation? It
20 just seems like a contradiction in terms.

21 MS. LEVINE: Your Honor, as I think the St.
22 Johnsbury case pointed out, we're in a difficult position.
23 We don't want to argue against ourselves. We don't think
24 equipment mootness would or should apply --

25 THE COURT: No, you don't have to --

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1 MS. LEVINE: -- but the Debtors --

2 THE COURT: I'm not asking you to argue against
3 yourselves. But I just don't... But I think here you need
4 to show me that this harm is not just conjectural.

5 MS. LEVINE: Your Honor, the reason we think it's
6 more conjectural is based on what the Debtors have said
7 regarding what they're going to argue about equitable
8 mootness, and they've pinned it, not just to the effective
9 date, but to the sentencing date, which under the plan could
10 be as early as November 1st, which is the day after our
11 argument in the District Court, with the effective date
12 really soon after that, as early as December 8th, a week
13 later.

14 So, you know, talking about the timing and the
15 proposals that they have offered, you know, we think
16 certainly we should at the very least get a stay until the
17 District Court's decision to make sure those dates don't
18 come and go before the District Court has a chance to rule.
19 We are going at --

20 THE COURT: Let me focus on that point. If it is
21 clear that the District Court is going to rule before
22 substantial consummation of the plan, before the effective
23 date, why is a stay needed? Why should the Debtors and the
24 other parties who are in support of the plan be precluded
25 from laying the groundwork in case the conditions to the

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1 effective date do occur, such as setting up new boards,
2 setting up the trusts, et cetera?

3 I raised this point, you know, the first time that
4 a stay was asked on an emergency basis, and I'm still having
5 a hard time seeing how that works. And frankly, if one
6 looks at Judge McMahon's order, which I'm not doing, but
7 it's as much in support for that view also, that there
8 really doesn't seem to be anything that's really going to
9 really run the risk of equitable mootness until after the
10 effective date, which it appears, at least, would occur
11 after Judge McMahon's ruling.

12 Now, I think you acknowledged that the stay you're
13 seeking would have to be a stay of everything, but could
14 just be a stay of the effective date, right? Or at least it
15 doesn't have to be a stay of everything? I don't want to
16 put words in your mouth. You didn't agree with this to the
17 other point. You didn't agree that it could just be a stay
18 of the effective date. But I think you did agree that the
19 stay of the confirmation order would not have to be a stay
20 of all of the order in order for there to be no risk of
21 equitable mootness, right?

22 MS. LEVINE: Your Honor, in our motion we talked
23 about one specific thing, because one of the opponents had
24 raised a concern about secreting assets. And you know, we
25 tried to have this conversation with the Debtors just to

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1 find out what are the specific things that you would want
2 exempted from a stay. And we didn't get an answer to that
3 question.

4 So if there was a question of other specific
5 things, those are things we would have to take under
6 consideration or have authority to agree to any other
7 specific thing than what we put in our brief.

8 But you know, we understand that Judge McMahon is
9 moving very, very quickly. We're all moving as quickly as
10 we can to get the appeal decided quickly. But there's no
11 guarantee that she is going to decide before a date certain,
12 particularly when these states are approaching in December.

13 THE COURT: So that would argue just for staying
14 the effective date until after her ruling, not staying
15 everything else that the Debtor would be doing to prepare
16 for the effective date, which isn't really --

17 MS. LEVINE: Well, Your Honor --

18 THE COURT: -- which isn't really under the
19 confirmation order anyway, because the confirmation order
20 doesn't really contemplate any material transactions before
21 the effective date, I think. Right? None have been
22 identified.

23 MS. LEVINE: Your Honor, the way to stay the
24 effective date is to stay the confirmation order, because
25 those are the transactions that lead up to getting to the

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1 effective date and --

2 THE COURT: Let me ask --

3 MS. LEVINE: -- lead up to getting to the
4 sentencing.

5 THE COURT: Let me ask you the question different.
6 What transactions out of the ordinary course do you believe
7 they confirmation order authorizes now before the effective
8 date?

9 MS. LEVINE: Your Honor, the confirmation order
10 grants a broad authorization to engage in the transactions
11 that they need to implement the plan. And part of the
12 problem is we're in the dark on exactly what they're doing.
13 We want to maintain the status quo because equitable
14 mootness is an existential threat to our appeal. And
15 maintaining the status quo is the only way to protect
16 against that risk of equitable mootness. You know, it's --

17 THE COURT: Do you have any case that stands for
18 that proposition?

19 MS. LEVINE: I'm sorry, which --

20 THE COURT: That any risk --

21 MS. LEVINE: -- that equitable mootness is --

22 THE COURT: -- any risk of equitable mootness is
23 enough? In fact, most of the cases say just the opposite of
24 that. It has to be a real risk, coupled with other things,
25 or at least something else. Now, maybe that something else

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1 here may simply be the significance of ruling on the merits
2 of the appeal.

3 But it would still seem to me that if you had --
4 and this is repeated in numerous rulings -- there's one by
5 Judge Briccetti in U.S. Bank National Association v.
6 Windstream Holdings, Inc., 2020 U.S. District LEXIS 137183.
7 Merely invoking equitable mootness as the Appellants have
8 done here -- a risk that is present in any post-confirmation
9 appeal of a Chapter 11 plan -- is not sufficient to
10 demonstrate irreparable harm. If the Court were to credit
11 this kind of argument for every such request, it would be
12 forced to review nearly every bankruptcy appeal on an
13 expedited basis and, of course, grant the motion if some
14 other factor were established. And he cites there In Re
15 Calpine Corp., 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y. Jan.
16 24, 2008).

17 But there are lots of courts that say that. That
18 you can't just say there's a risk of equitable mootness and
19 then get a stay pending appeal. You have to actually focus
20 on what that risk is and how real it is, and then see how
21 it's tied into the other factors.

22 And I'm still not seeing it as far as between now
23 and a date within a reasonable time after Judge McMahon's
24 ruling, which I think the drafters of the rule have said is
25 at a minimum 14 days. And that would be just a stay of the

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1 effective date. I mean, there's no discussion about how
2 this plan could be substantially consummated before then.

3 And even then, there's the issue of who are the
4 people who are harmed by a continued appeal? And if we're
5 focusing just on the Sacklers, I don't think that's the type
6 of harm for the shareholder released parties; that's the
7 type of harm that the courts recognize is a basis for
8 equitable mootness, because they're in the heart of the
9 issues that are on appeal. There would have to be other
10 third parties, legitimate parties who aren't in the dispute
11 who were being harmed.

12 MS. LEVINE: Your Honor, you know, this sort of
13 goes back a little bit to where I started, where we think
14 the harm is the complete elimination of claims that becomes
15 unreviewable if the appeals are equitably moot.

16 THE COURT: All right. I think we've covered --

17 MS. LEVINE: And --

18 THE COURT: -- this point, because again, I don't
19 think you really answered my question on how it becomes
20 unreviewable. I just don't -- I don't see it here. I don't
21 think you carried your burden of proof on that point, at
22 least through the date of Judge McMahon's ruling and the
23 rule stay that goes into effect. And then parties can ask
24 her if she thinks there's a basis for a further stay in the
25 Second Circuit. And they will have had the benefit of

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1 looking at the issue besides equitable mootness that you're
2 focusing on, which is the importance of the merits, and can
3 weigh those themselves.

4 I just -- I don't -- the release isn't going to be
5 effective until the effective date. So to lose the release
6 doesn't happen until the effective date.

7 MS. LEVINE: And Your Honor, we think it's --
8 we're asking for a stay, you know, and in the alternative,
9 at least a stay through the District Court's decision, to
10 make sure those dates don't pass, to make sure that we can
11 this appeal heard on the merits. We think that's critically
12 important. We think it raises really important issues that
13 should be heard on the merits.

14 THE COURT: All right. Well, again, I can
15 understand that argument as far as a stay of the effective
16 date. I'm still not seeing it as far as a stay of other
17 actions, which would not be -- I don't believe -- authorized
18 before the effective date. And I've already ruled, and I
19 continue to believe, that the advance order is clearly not a
20 basis for equitable mootness. I mean, it's just -- that
21 would be -- for a doctrine which is already under legitimate
22 attack, to rule that that order is a basis for equitable
23 mootness is just -- I can't imagine it. I mean, I think
24 that's a frivolous argument. I really can't -- it's just
25 inconceivable.

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1 MS. LEVINE: Your Honor, I appreciate your views
2 on that. You know, it's our concern that Second Circuit's
3 not bound, and our hands are tied a little bit because we're
4 in the dark about what the Debtors are actually doing. We
5 have asked them --

6 THE COURT: All right. Well, I'll --

7 MS. LEVINE: -- multiple times.

8 THE COURT: -- ask the Debtors.

9 MS. LEVINE: We haven't gotten an answer.

10 THE COURT: I'll ask the Debtors what they believe
11 they're authorized to do before the effective date to lead
12 to the argument that the plan is substantially consummated
13 and, therefore, it would be inequitable for third parties,
14 not the parties who have the benefit of the release, that
15 you are appealing, in essence. That's the harm you're
16 trying to address is your dispute over the legitimacy of the
17 third-party release. And I think I do have a -- just
18 because I... Look, the cases are reported for a reason.
19 The lower courts follow them.

20 So, you know, one reads Charter, one reads
21 Windstream, one reads the Chateaugay case, and Metromedia.
22 I mean, these are MPM Silicones. These are published
23 opinions by the Second Circuit where they lay out when
24 something will be found to be equitably moot. And it is an
25 equitable doctrine, and so the facts matter.

1 But, you know, I think actually the trial courts
2 have been given the job generally to find the facts in light
3 of the case law, and I just can't imagine that the facts
4 before me, up at least until the effective date, would lead
5 the Second Circuit to find that the appeal was rendered
6 equitably moot.

7 It's just -- there's no effective date, there's no
8 substantial consummation, there's no sale that's happening
9 before the effective date, there's no other transaction.
10 And it just -- it doesn't fit even within the actually
11 fairly pro-equitable mootness case law in the circuit, which
12 focuses on the heavy showing someone has to make against
13 equitable mootness when a plan has been substantially
14 consummated. This plan isn't even effective, so it's hard
15 to believe that it could be substantially consummated.

16 Anyway, so why don't we move on to the balance of
17 hardships and public policy.

18 MS. LEVINE: Your Honor, so on the balance of
19 hardships, the opposing parties have rested primarily upon a
20 harm from delay. No one questions the importance of
21 providing relief to those who have suffered from the opioid
22 crisis. In our view, that supports a stay. Those who
23 oppose the plan have also suffered from the opioid crisis.
24 They have equally pressing interests and abatement and
25 compensation, but they would have their claims eliminated

1 entirely by the plan, not just delayed.

2 And we don't agree that a stay would cause
3 significant delay in the context of this case, which has
4 been pending for over two years, with litigation against
5 Purdue and the Sackler Family that began before that, where
6 the appeal is being expedited at a very rapid pace before
7 the District Court. The argument on that appeal is in just
8 three weeks. And, of course, if it went to the Second
9 Circuit, we would seek to expedite it there as well.

10 The United States Trustee is the watchdog, the
11 congressionally appointed watchdog, acting in the public
12 interest to try and make sure bankruptcy is not abused.
13 We're advocating -- we understand you disagree -- but to
14 ensure that the plan does not transgress the Constitution or
15 the Code, and we think there's a public interest in having
16 these issues heard on the merits regarding these third-party
17 releases, and having, you know, the appellate courts provide
18 more clarity on the limits of when they're allowed and when
19 they're not allowed.

20 The Debtors and their allies have relied a lot on
21 the creditors' support for the plan suggests that a stay
22 would be against the public interest. The creditors'
23 support for the plan is not the same thing as the public
24 interest. It just reflects the interest of the creditors
25 that voted in favor of the plan.

1 There is a significant public interest in
2 vindicating the rights of the minority and preventing the
3 will of the majority from going unchecked by appellate
4 review. And we think that permanent elimination of the
5 claims against the consent of the people who did not want to
6 release these claims outweighs that marginal delay, which,
7 again, we think -- particularly focusing in on the District
8 Court decision -- is relatively minimal.

9 THE COURT: Well, let's not focus on the District
10 Court decision for the moment. Let's focus on when you
11 believe that -- when do you believe that a final decision
12 here would be made? And I'm assuming that's through the
13 Supreme Court process.

14 MS. LEVINE: Yes. If this were to go -- if
15 someone were to petition for certiorari, it would be to the
16 Supreme Court for process, and of course, if the Supreme
17 Court granted cert, that would certainly reflect that these
18 are significant issues that were review.

19 THE COURT: So have you projected how long that
20 would take, that process? Are we talking 2024?

21 MS. LEVINE: Your Honor, I don't know the answer
22 to that.

23 THE COURT: Isn't that important to figure out?

24 MS. LEVINE: I don't know that there's any way to
25 predict with any kind of certainty how quickly the courts

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1 will go, other than we've committed to expediting these
2 appeals. And you know, that's shown through our actions
3 with how quickly we are moving in the District Court.

4 THE COURT: Well, does that apply to the Supreme
5 Court, though? They don't take expedited appeals like this,
6 do they?

7 MS. LEVINE: Yeah, I don't know exactly what the
8 process is, Your Honor, but I don't think that the
9 expediting works in the same way in the Supreme Court. So I
10 don't have an answer for how long that would be. But, Your
11 Honor, we do think that these issues are important and that,
12 you know, a delay from the stay is outweighed by the
13 elimination of these rights. And that that would be an
14 irreparable injury for these claims to be eliminated
15 entirely, without a full review on the merits.

16 THE COURT: And as far as the individuals' rights
17 are concerned, you assert them -- that they would be
18 asserted by individual under state consumer protection laws?

19 MS. LEVINE: Some of this -- well, some of the
20 individual claims are under state consumer protection laws,
21 Your Honor. Some are under common law. I'm not sure I
22 quite caught your question.

23 THE COURT: I'm just trying to figure out what the
24 claims that you're looking to protect are, as far as
25 individuals' claims.

1 MS. LEVINE: Direct claims, based on the
2 individual non-debtor conduct for their own misconduct,
3 breaching a duty directly to the Plaintiffs, such as the
4 cases that -- the complaints that we cited in our brief,
5 which allege claims under state consumer protection
6 statutes, common law fraud, negligence, RICO. There's a
7 number of claims that have been asserted along those lines
8 that allege direct participation and direct liability, based
9 on the individual Defendants' own misconduct.

10 THE COURT: Okay. And that misconduct would be
11 misconduct in being an officer or director or shareholder of
12 the Debtors?

13 MS. LEVINE: In the cases that we've cited, yes.
14 I believe the individual defendants were in those roles.
15 But the allegations are that they'd reached -- is not just a
16 sort of veiled piercing, breach of fiduciary duty,
17 imputation of the company's conduct, but that the
18 individuals had breached their own duty and engaged in their
19 own misconduct, making them directly liable to the
20 Plaintiffs.

21 THE COURT: Have you found any of those cases or
22 any evidence from the confirmation hearing that shows that
23 those allegations don't substantially or entirely overlap
24 with the showing that would be necessary for piercing the
25 corporate veil or other causes of action that the Debtors

1 would have?

2 MS. LEVINE: Your Honor, the factual allegations
3 may overlap, but I mean, I think this gets to where we
4 disagree with what the proper scope of the non-debtor
5 releases are, and that is something that we think should --
6 is an important issue that should be reviewed, and one of
7 the reasons why we're seeking a stay pending appeal.

8 You know, when Metromedia talked about the cases
9 that have -- the rare cases that have allowed these
10 releases, they were in circumstances that were more limited.
11 They were in class actions, like Drexel, which is this is
12 not -- are aware they were, you know, more surely derivative
13 claims, such as fraudulent -- you know, claims that were
14 duplicate fraudulent transfer claims, like in Madoff or
15 Tronox or in Manville I, where it was directly against the
16 asset of the estate, and that in the claim was a secondary
17 insured that was derivative of the primary insureds' claim,
18 the debtor was the primary insured.

19 So we think that question of whether overlapping
20 factual allegations is enough to put this within the scope
21 of a non-debtor release and whether that's the appropriate
22 scope is an important question, as a question that should be
23 addressed on appellate review.

24 THE COURT: Well, no, I've already said I believe
25 that's correct. I'm just trying to figure out here -- and

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1 this is in a different context; this is balancing the harms
2 -- the right of someone to pursue, which on the facts are
3 duplicate claims or overlapping claims, is so strong,
4 particularly when they would receive a recovery, at least
5 which was found under the plan, they wouldn't receive at all
6 without the settlement, is enough to override the harm
7 caused by the delay.

8 MS. LEVINE: Your Honor, we think there is harm
9 here. The claims directly against the Sacklers or other
10 non-debtors were never valued. And there's a harm to having
11 the choice of whether to settle --

12 THE COURT: I actually did value them.

13 MS. LEVINE: -- or proofs of that claim are not --

14 THE COURT: I don't know why --

15 MS. LEVINE: -- taken away from you.

16 THE COURT: I don't know why you say that. I
17 actually did value them in the aggregate. And I considered
18 those complaints. And I said, given the battle of the
19 century that would ensue, the settlement was fair. The U.S.
20 Trustee took no discovery on those issues and didn't make
21 any case on them. Some of the objecting states did, and I'm
22 sure Judge McMahon will read carefully the witness testimony
23 on those points.

24 But I have to say, I am having a hard time seeing
25 how those claims, which really are overlapping claims as far

1 as I can tell -- and I did the best I could to cabin the
2 release to make it clear that they would not expand beyond
3 that -- that the people that you're looking out for would
4 get any recovery whatsoever in the context where the
5 settlement was not in place and there would be a litigation
6 free-for-all.

7 Again, you have the United States getting it
8 superpriority claim. You have individual states litigating
9 their claims. And then that's up against a class action
10 lawyer or two or three, back in the MDL, where there already
11 was, by the substantial private side in the MDL, a
12 settlement for a lesser amount, namely \$3 billion.

13 So I'm just having a hard time seeing, other than
14 the intellectual desire to clarify this issue one way or the
15 other, how the people who would object to the release of
16 their claims are harmed more than the people who would be
17 receiving the benefit of the plan distributions.

18 MS. LEVINE: Your Honor, I think we have a
19 disagreement about what the evidence shows about that. But
20 there's also a harm from having that choice taken away, and
21 what we view of a violation of due process rights to be
22 forced into a settlement that one does not agree to.

23 THE COURT: Well, the parties you're speaking on
24 behalf of certainly had notice of the confirmation hearing
25 and the right to hire a lawyer to make that very argument,

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1 which is a lot easier to make than hiring a lawyer to
2 compete against 48 states and the Debtors and the lawyers
3 and their clients who make up the Ad Hoc Committee of
4 Personal Injury Claimants.

5 If they're not prepared even to hire a lawyer to
6 fight the plan, how do you assume that they're going to even
7 undertake the litigation that you want to preserve for them?

8 MS. LEVINE: Your Honor, the premise that there
9 was adequate notice, again, you know, we disagree with.
10 That's part of our objection. And we know you disagree.
11 And this is part of the reason why we think this needs
12 appellate review.

13 And you know, there are parties who have filed
14 claims that would be precluded. We think we've shown that.
15 There are numerous cases listed in the preliminary
16 injunction.

17 THE COURT: But they haven't objected to the plan.
18 And you're not going to represent --

19 MS. LEVINE: Mr. Hartman has.

20 THE COURT: You're not going to represent them in
21 the litigation, right?

22 MS. LEVINE: No, Your Honor. And of course, the
23 United States Trustee is here not representing individuals,
24 but representing the public interest in making sure that the
25 bankruptcy system isn't abused. But we think, you know, you

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1 can still look to that harm, the due process harm to people
2 who are having claims eliminated, and to the public interest
3 in having these significant important issues addressed on
4 appeal as part of your harms balancing in addressing a stay
5 pending appeal.

6 THE COURT: Okay.

7 MS. LEVINE: Your Honor, I don't know if you have
8 further questions. You know, we've made our case in our
9 briefs. Obviously, we have some disagreements, but we would
10 stand on a request for a stay pending appeal. And I will,
11 if you have no further questions, cede the floor to some of
12 the other movants.

13 THE COURT: Okay.

14 MR. GOLD: Good morning, Your Honor. Matthew
15 Gold, from Kleinberg Kaplan, representing the State of
16 Washington. Can you hear me?

17 THE COURT: Yes.

18 MR. GOLD: May I proceed?

19 THE COURT: And see you too. Yes. You can go
20 ahead.

21 MR. GOLD: Thank you, Your Honor. First, I just
22 would like to touch on -- because I think it's an important
23 point in context of the questions that Your Honor has raised
24 -- the attempts that were made to try to resolve this matter
25 prior to this hearing.

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1 I think the key point, which Your Honor said in
2 framing the question for us, was that it would be my wish
3 that the schedule for the appeal is a reasonable one and
4 does not run the risk of causing Norma's harm to creditors.
5 I'm not going to quote every word you said, but the key
6 point was, with a second potential look at the Appellate
7 Court as to whether any further stay is necessary.

8 And I think that that is the point here where,
9 with what we -- what I described earlier as our fallback
10 position, that we are seeking to have a stay consistent with
11 Rule 8025 that would at least take the process through a
12 decision from the District Court, and then give a period of
13 time for a higher court to decide whether to further extend
14 the stay. The --

15 THE COURT: Can I represent you on that point, Mr.
16 Gold?

17 MR. GOLD: Sure.

18 THE COURT: When talking to the U.S. Trustee's
19 counsel, I made a distinction between a stay of the
20 effective date, or the occurrence of the effective date
21 under the order, which would be a specific condition to the
22 effective date in the order and in the plan, and a stay of
23 the order in its entirety. And it seemed to me that the
24 latter might be warranted, but not the former. I mean --

25 MR. GOLD: Well --

1 THE COURT: -- the other way around. That the
2 latter would not be warranted, but the former might be.

3 MR. GOLD: I think that a proper consideration of
4 that question, Your Honor, requires a consideration of the
5 effect of sentencing. And that is the -- and that is
6 something that may not -- that is clearly contemplated under
7 the confirmation order, although it may not be completely
8 clear how it -- whether it arises under the plan or under a
9 separate stipulation.

10 But the connection, Your Honor -- and I think the
11 Debtor has been very clear about this -- is that they are
12 going to press that once sentencing has occurred, they will
13 be suffering immense harms if they are not permitted to then
14 consummate the plan and to enter into the transactions under
15 the plan. And so that, therefore, to enable there to be a
16 meaningful stay of the consummation of the plan, as Your
17 Honor has posited, there needs to be a delay of the
18 sentencing as well.

19 If the Debtors can posit -- now, right now I'm
20 positing what their argument is going to be, and I realize
21 that that's a somewhat shaky limb to be on, but that's
22 pretty much where I understand their position is going to
23 be, so that to prevent the possibility of a shipwreck or
24 major harms occurring if there is sentencing and not a --
25 and they can't consummate the plan, we need to have a delay

1 in the sentencing.

2 If the sentencing is delayed and concurrent with
3 that a stay of the effective date of the plan, we believe
4 then Your Honor's analysis is correct, that that should be
5 sufficient to maintain the status quo and prevent there
6 being a substantial consummation that would be the predicate
7 for an equitable mootness argument.

8 Now, even there, we're at a slight disadvantage
9 because, as the U.S. Trustee has said, we don't know exactly
10 what the Debtors would be doing and it would be a lot
11 cleaner for us to accept this, if the Debtors would
12 straightforwardly say, we agree with you; nothing else that
13 is happening here would create a predicate for equitable
14 mootness, along the lines of the assurances they gave to the
15 parties in connection with the advance order, so that we
16 would have a basis of knowing that there wasn't something
17 going on that we're not aware of and that in our saying we
18 don't think there's a problem, someone plays a gotcha game
19 and says, yes, they weren't aware of this and that happened.

20 But based on our assessment, what we're aware of
21 being contemplated, that's the one critical point that we
22 have to add. There has to be a delay in sentencing and then
23 a delay in the effective date of the plan, which would
24 happen together because the effective date of the plan can't
25 occur without sentencing in the first instance.

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1 And so the reason we were unable to reach any kind
2 of resolution with the Debtors in trying to resolve this
3 short of having this lengthy hearing today was that they
4 insisted that any resolution we reached with them had to
5 include a date certain for the sentencing to occur.

6 And so that's why we've been unable to reach an
7 assessment with them, because they kept including the
8 sentencing, reserving their right to argue that the
9 occurrence of the sentencing would create an equitable
10 mootness problem, either by itself or because of what would
11 be entailed afterwards. They didn't get to that level of
12 specificity. But that's why we tie those two things
13 together.

14 THE COURT: Okay. And I appreciate that I may be
15 asking you to say things that are contrary to your later
16 argument that sentencing wouldn't render the plan moot. And
17 all I can say is that you wouldn't be held to those things
18 in the future, and I'm sure the Debtors have thought of them
19 to.

20 So I'm having a hard time seeing how the
21 sentencing could create equitable mootness. I mean, it's
22 part of a plea agreement. It's scheduled in front of a
23 different judge. I guess I could enjoin --

24 MR. GOLD: Oh --

25 THE COURT: -- the Debtors from seeking it. But

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1 the agreement has this provision that they're supposed to go
2 get sentenced.

3 MR. GOLD: Well, Your Honor, as I understand it --
4 and again, this will be something that the Debtors are
5 saying this is argument that they're going to make.

6 THE COURT: Right.

7 MR. GOLD: And if they say before the Court now
8 that they would not make this argument, that might be a lot
9 cleaner. But as I understand it, their position is going to
10 be that once sentencing occurs, they are no longer able to
11 operate as the companies that are currently constituted.
12 That because they will be sentenced, they will be unable to
13 sell product, to receive Medicare, or contributions and
14 other things. And that therefore, they will be threatened
15 with an immediate shutdown, a corporate catastrophe, unless
16 they are able to go ahead with the restructurings that are
17 contemplated under the plan, and so then that's why those
18 two will be tied together.

19 Now, I should say that, Your Honor, we would love
20 nothing more than to engage with the Debtors and to say is
21 there a way to allow this to go forward, to allow some
22 corporate restructuring to take place, to allow some
23 payments to go to the victims of Purdue and the Sacklers
24 that are supposed to be receiving payments under the plan.

25 We're not trying to -- that's not our goal, to

1 prevent those types of assistance from happening. And if
2 there is a way for the parties to on one hand permit some of
3 these things to go forward, while on the other hand
4 preserving the right of appeal, we are very -- we have
5 always been open to having that discussion of trying to make
6 propositions along those lines to the parties. Or perhaps
7 something along the lines of the emergency relief fund that
8 was proposed during the case, but that did not occur.
9 Something like that that could perhaps take place to allow
10 parties to get relief.

11 What we perceive is that the parties who have
12 refused to engage with us on this point are doing so because
13 they want to be able to hold up the possibility of relief as
14 their ticket to getting an equitable mootness that would
15 preclude further appeals.

16 So if there is a way of managing to separate these
17 things through stipulation, or an order, or something that
18 allows some of these things to occur -- and I think Your
19 Honor is right that perhaps they are not at all necessarily
20 as abstract principles linked, but we believe that -- our
21 understanding is that the way this plan has been drafted and
22 that this plan has been put together -- and this is a plan
23 that has been drafted and put together with a clear strategy
24 of preserving it through equitable mootness -- that the
25 effort has been made to tie these things together so that

1 they could not be disentangled, and so that starting down
2 this road would necessarily create the predicates for
3 equitable mootness. And that starts with the sentencing and
4 then pulls in the restructuring and then the other matters
5 that occur there.

6 I will just note then with respect to the timing,
7 the plea agreement took place, I'm going to say, in October
8 or so of 2020, and was held in abeyance for a period of time
9 to allow further proceedings before this Court, confirmation
10 and other such things. The Debtors then, for reasons that
11 are at least opaque to us, put in a further delay for them
12 to do certain preparations prior to the sentencing
13 occurring.

14 So it's pretty clear to us that the sentencing,
15 which we are not asking to be undone but can be held in
16 abeyance while the issues under the plan receive proper
17 appellate review, and so holding those matters off, the
18 Debtor has managed to stay in this presentencing period for
19 over a year now and contemplated further staying.

20 So we believe that the most effective and simplest
21 way to preserve the status quo is to have, as Your Honor
22 said, a stay that includes the effective date plus the
23 sentencing to avoid the shipwreck scenario. Or in the
24 alternative, we're perfectly -- we are desirous of trying to
25 come up with a better way to allow some benefits to go

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1 through, if it will not -- if the parties can agree that
2 doing that will not equitably moot an appeal.

3 But so far, we have not received serious
4 engagements on that. And apparently, the parties prefer to
5 try to use the very real need of these victims to receive
6 money as a kind of hostage situation where they can't get
7 their money unless our appeals are irrevocably denied
8 through (indiscernible) risk.

9 THE COURT: Okay.

10 MR. GOLD: I will not -- I will move on, then,
11 Your Honor. I will not touch on the merits particularly,
12 because as I think Your Honor said, we agree that the
13 standard is sufficiently flexible, that we've made enough of
14 a showing with the merits of the appeals that we wish to put
15 forward, to satisfy the test in the Second Circuit. And we
16 concede that we have to meet several factors of the prongs,
17 and it's not simply enough to have succeeded on one of them.
18 But we believe that we've made a sufficient showing on those
19 to move on to the other prongs as well.

20 I would just note that the irreparable harm that
21 we will suffer here is the deprivation of the rights of the
22 moving states to bring their independent actions under state
23 law against the Sacklers. And that the potential loss of
24 those claims is certainly real enough to satisfy any
25 requirements that it not simply be mere equitable mootness,

1 but equitable mootness plus a consequence, that that's the
2 consequence here.

3 And then there are other cases also raised in the
4 briefs that we believe are also compelling, that says that
5 any time a state is prevented from enforcing its laws, it
6 has also suffered an irreparable harm. Those two together,
7 we believe, certainly satisfy the requirement that there be
8 a form of irreparable harm shown here.

9 I will then turn, if Your Honor doesn't have
10 questions, to the question of the balancing of the harms,
11 which is the next factor here.

12 It feels to us that an awful lot of the arguments
13 that the stay opponents have put forward basically can be
14 described from the movie, "Blazing Saddles", where the
15 sheriff who finds himself in a difficult spot -- played by
16 Cleavon Little -- points a gun at his own head and manages
17 to convince the parties that the threat to himself that he
18 is posing are sufficient to allow him to be extricated from
19 that position. And the reason I mention that here is
20 because the harms that the stay opponents are positing here
21 are ones that they are themselves creating to a large
22 extent.

23 So first, as I've touched on already, is the
24 question of the sentencing. I believe their argument is
25 going to be that if sentencing occurs, but they can't

1 proceed, they will suffer harm. Well, the simple answer is
2 for them to seek to defer sentencing until the appeals have
3 run their course.

4 Second, we have these arguments that the Sacklers
5 have the right to terminate the agreement if a stay is
6 entered. And I find this an outrageous suggestion, Your
7 Honor. I will note that during the hearing that took place
8 on October 14th on certification of a direct appeal, there
9 was another issue regarding a Sackler termination right.

10 Mr. Huebner stated emphatically to this Court that
11 of course he had a waiver of that Sackler termination right,
12 and that he would not be coming into the court without
13 having a waiver of that termination right in his pocket.
14 And the reason for that was self-evident. How could one
15 think that Purdue would put in jeopardy the Sackler
16 settlement agreement, the centerpiece of the plan? But that
17 is what Purdue is arguing right here. That they granted the
18 Sackler a walk right.

19 I will note that this walk right was slipped into
20 the agreement at literally the last moment, while the
21 confirmation trial was proceeding, after the evidentiary
22 portion of the confirmation trial had closed, after all the
23 testimony about how wonderful a settlement this was had
24 already been placed on the record.

25 And I will also note that Purdue did not consider

1 this walk right to be significant enough to advise the Court
2 and other parties, oh, by the way, we've posted an amended
3 Sackler settlement agreement, and it happens to contain a
4 provision that will allow the Sacklers to terminate this if
5 there's a stay pending appeal, which a possibility of
6 request for a stay was clearly contemplated by everyone.

7 So, now, how could this be? How is it possible
8 that all the tremendous lawyers representing the stay
9 opponents voluntarily put in jeopardy the centerpiece of the
10 plan? Not because they were confident that there would be
11 no appeal, nor that there would not be a motion for a stay
12 pending appeal. It has to be that they could not seriously
13 expect that the Sacklers would spurn all the benefits that
14 they get under this plan and actually exercise this right,
15 and rather, because they intended to use this provision as a
16 means to bludgeon the courts into denying a stay. And we
17 submit that that should not be permitted here.

18 Second argument that they put forward relates to
19 the attorneys' fees that they themselves are incurring and
20 will incur during the period of the stay. We believe this
21 is also an outrageous point. If they seriously believed
22 that the size of the fees that they generate were causing
23 harms to victims of Purdue and the Sacklers, they ought to
24 be finding ways to limit their fees.

25 To start with, it was not necessary for seven

1 oppositions to the stay motions filed by seven different
2 parties to be filed. They could've coordinated a single
3 filing. I know this could be done because the states
4 routinely coordinate to present fewer filings to Your Honor.

5 More to the point, steps could've been taken
6 during the case to curtail the amount of professional fees
7 during the case, or to curtail the amount of fees that will
8 be charged post-confirmation. But no. The only way in
9 which the stay opponents suggest that fees ought to be
10 controlled is by denying this stay to the Appellants. And
11 we submit that that is too transparent to take seriously.

12 Then we reach what I believe is the far more
13 serious concern, which is the delay in relief going to the
14 victims of Purdue and the Sacklers. I just note that this
15 is not a new problem. This is a problem that's been
16 weighing on everyone through the over two years that this
17 case has been pending. This did not suddenly become a
18 problem. The victims of Purdue and the Sacklers needed help
19 two years ago when the cases were filed. But that undoubtedly
20 need was subordinated to the legal process of this case.

21 The plan opponents could have during the case
22 established the emergency relief fund to provide faster
23 relief to the victims. But they didn't. Now, we are in a
24 post-confirmation pre-effective date period. There was the
25 famous 82-day period before the plan could go effective,

1 which was put in there, as we understand it, for the
2 convenience of the Debtors to allow them a deliberate period
3 of time to undertake certain corporate transactions.

4 If the harm to the parties of not getting their
5 money sooner was a serious possibility, that period of time
6 could've been shortened as well, but it wasn't. The only
7 time when this delay apparently becomes intolerable is when
8 it's used as a means to curtail the stay that we're
9 requesting and the preservation of our appellate rights.

10 The appealing states -- and especially in this
11 context, where we are asking for a stay -- goes through the
12 time of the anticipated ruling of the District Court, plus a
13 meaningful period of time to take the issue to a higher
14 court. The incremental harm to those parties that will
15 occur during this relatively imitated period is far less of
16 a kind of all the terrible delays that they've had to suffer
17 through the case and does not provide an independent basis
18 for denying a limited stay through this time period.

19 THE COURT: Well, I'm having a hard time following
20 that point, Mr. Gold. I mean, it's still harm, and I think
21 that the real issue is how great a harm is it in comparison
22 --

23 MR. GOLD: I agree, Your Honor.

24 THE COURT: -- to the countervailing harm of
25 giving the Appellants the opportunity to try to vindicate

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1 their rights on appeal.

2 MR. GOLD: I completely agree, Your Honor. And
3 it's a complicated issue because this is apples and oranges,
4 if I may say. The harms that we have here are different in
5 type, difficult to quantify, and so the Court has to engage
6 in the kind of balancing. I'm just suggesting that the harm
7 here will not -- we're not disputing that it really occurs,
8 but this harm is one that the parties have lived with
9 throughout the case because there were important legal
10 principles or other things that were taking place. And
11 we're suggesting that it does not outweigh here the
12 preservation of our appellate rights.

13 THE COURT: Well, again, that may be the case
14 through a relatively short period after what would normally
15 be the effective date, because distributions in some measure
16 would be made into the trust, but not out of the trust, for
17 a period after the effective date. But the longer you go,
18 the more the delay really counts, because there comes a
19 point when (indiscernible) claims start being liquidated and
20 the NOAT procedures are established, and at that point, the
21 money really does start going out.

22 MR. GOLD: Well, I --

23 THE COURT: Have your clients and the Debtors
24 talked about when that point is likely to be?

25 MR. GOLD: Well, as I said, Your Honor, what we

1 have attempted to do with the Debtors is to find a way to --
2 and again, using the model that was engaged with the trust
3 advance motion to have the parties agree to allow various
4 steps to take place, including the ones that Your Honor has
5 listed -- and we have had, I have to say, little engagement
6 or appetite for engagement from the Debtors or the other
7 parties in terms of being able to parse.

8 I do agree that part of the benefit of having the
9 stay be limited to the period of time that we've discussed
10 in terms of getting us to the next level is that we can
11 analyze more concretely what steps are going to occur,
12 rather than looking at and allowing the next courts to be
13 able to focus on what issues would be arising then, and what
14 could be concretely happening then, and weighing that
15 against the harms that might occur.

16 It is certainly for the purposes of the District
17 Court's ruling, that by all evidence, Judge McMahon is
18 keenly aware of the importance of having a decision done
19 quickly. And frankly, again, the other benefit is that
20 because she was aware of this, she was able to insist on a
21 briefing schedule to enable that all to work.

22 And if we are going to the next court, should that
23 be necessary, then, again, the Second Circuit could be in a
24 position to condition a stay upon an expedited briefing
25 schedule before the Second Circuit, which no lower court

1 could meaningfully be in a position to impose on the Second
2 Circuit, which they could do themselves.

3 So we posit that the harm for this period of time
4 is not sufficient to outweigh the importance of the
5 appellate rights that are being preserved, and that the
6 issue may have to be revisited by another court with its own
7 timetable in place and depending on where the matters stand
8 at that point.

9 And as I said, we are more than willing to try to
10 work with these parties to find a way to allow transactions
11 to occur, to allow even payments to go to needy parties, if
12 there can be a way to structure that to not affect the
13 appellate rights.

14 So now I turn Your Honor to the public interest
15 component of the process. We submit that it is manifestly
16 in the public interest that this plan be fully tested on
17 appeal, not -- the Debtors seem to sometimes have the
18 position that the only appeal that is meaningful here is
19 appeal to the District Court. This case could have been in
20 front of the Second Circuit already, had the Debtors agreed
21 to certification of a direct appeal. But they chose not to.

22 THE COURT: Well, the Circuit would have had to
23 have taken it too.

24 MR. GOLD: That's true, Your Honor. I'm just
25 saying that the Debtor -- that we didn't reach that point.

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1 And part of the reason why we didn't reach that point was
2 that the Debtors at that hearing insisted that it was
3 important that we go to the full process of first review
4 from the Bankruptcy Court, and then review from the Court of
5 Appeals.

6 And so we want to -- now that we are on that path,
7 we want to make sure that all levels of appeal are preserved
8 and not booted out through equitable mootness. And we
9 submit that that is manifestly in the public interest, and
10 that it is against the public interest that parties be
11 permitted to design plans to create equitable mootness
12 factors in them as a means of avoiding review. I mean, Your
13 Honor, I can state that I received emails today of CLA
14 programs that are already being designed and marketed to
15 teach bankruptcy lawyers how to design plans that provide
16 non-consensual releases and that can be protected by
17 equitable mootness. The community and the country as a
18 whole is watching this, and it is critical --

19 THE COURT: Equitable mootness --

20 MR. GOLD: -- that this is --

21 THE COURT: -- has been an issue in the -- at the
22 circuit level for decades.

23 MAN: I understand, Your Honor.

24 THE COURT: And somewhat inexplicably to me the
25 Supreme Court turned down cert this last term on two cases

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1 that could've resolved that issue. That has nothing to do
2 with this plan at all. And it would seem to me that as we
3 just discussed, the public interest in avoiding harm,
4 tangible harm, to the victims increases with time. And
5 you're just ignoring that when you talk about the public
6 interest.

7 And again, it's well-recognized that one issue,
8 one element of the public interest, is the finality of
9 reorganizations. So I think it's much more complicated than
10 you're saying here, but I also think that what you're
11 arguing for now is well beyond what you had been arguing
12 for, which is some form of a stay through a ruling by the
13 District Court. Because now you're talking about staying
14 matters through a determination by the Supreme Court, which
15 could be in 2024. And --

16 MR. GOLD: Allow me to clarify, Your Honor,
17 because I understand why you might have thought that, but
18 that's not what I meant to say. The -- I think we have been
19 candid that we will -- that we intend to seek stays that go
20 on to the higher levels. What I am now suggesting to Your
21 Honor is that the stay that we would be obtaining from Your
22 Honor would preserve our ability to seek further stays from
23 higher courts --

24 THE COURT: Okay. Fine.

25 MR. GOLD: -- and that --

1 THE COURT: Then I -- that's fine. So we're
2 really -- I think -- look, here, the public interest point
3 very much dovetails with the balance of harms, as far as I
4 can see. The parties here have agreed on the form of the
5 distribution of the money under this plan and have touted it
6 as something that is a single achievement. When I say the
7 parties here, I mean both the appellees and the appellants.

8 So what we're talking about here is a dispute
9 between the appellants and the appellees on whether more
10 money can be obtained through this process because that's
11 what we're talking about. We're talking about more money,
12 and whether that warrants additional delay. And to me that
13 just goes back to the balancing of the harms.

14 MR. GOLD: Well, Your Honor, the -- I would just
15 clarify a few points of what you have stated. I do agree
16 that the appealing states participated in the design of many
17 features of the plan, and that we do believe that a lot of
18 those features of the plan are salutary and are ones that we
19 agreed to together. But that was always -- those were
20 always being negotiated based on the predicate that other
21 issues, principally the releases, could also be
22 satisfactorily resolved, and unfortunately, they were not.

23 The -- I will also note that the issues that arise
24 vis-a-vis the Sacklers, are not solely issues relating to
25 the amount of money that can be paid. Although that is

1 certainly an important component of it, but there are other
2 issues regarding, for instance, the Sackler agreement to
3 have their name taken off of various institutions, about the
4 scope of the -- of when documents can be available in the
5 document depository -- or repository and other things that
6 are not, that take this case beyond a mere matter of money.

7 And I again state that the appealing states are
8 highly anxious to try to find ways to reduce the burdens on
9 the ones that Your Honor has identified rather than to hold
10 them hostage as a means of avoiding appellate
11 (indiscernible) important question. Because we -- because
12 all of these are -- all the things that Your Honor stated
13 are matters of public concern. But where you have a --
14 where you have what as Your Honor has identified as non-
15 frivolous, serious questions regarding the permissible scope
16 of a -- of releases granted pursuant to a confirmation
17 order, having those issues clarified on appeal we submit is
18 a compelling public interest, notwithstanding the other
19 matters that Your Honor has identified.

20 THE COURT: Well, those other matters are, I
21 think, pretty eloquently laid out in the declarations of Ms.
22 Juaire. I'm hoping I'm pronouncing that right, J-U-A-I-R-E,
23 and Ms. Trainor, T-R-A-I-N-O-R.

24 MR. GOLD: Your Honor, I will --

25 THE COURT: I guess I've heard you and I

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1 appreciate what you've said, Mr. Gold, about the State's
2 willingness to work with the appellees on intermediate steps
3 that minimize that countervailing harm that they detail.

4 I guess the point that I need to press is, are the
5 three states prepared to accept some risk of equitable
6 mootness as part of those steps. The U.S. Trustee
7 apparently takes the position that it's not, which seems
8 rather bizarre to me and contrary to the case law. But I
9 don't know whether what you're offering here is just couched
10 by saying of course we can't take a risk of equitable
11 mootness, or is it willing to take some risk?

12 MR. GOLD: Well, Your Honor, our -- we -- first,
13 we are agreeing to accept some -- our issue is not -- our
14 view is not identical to the U.S. Trustee, which as you've
15 obviously seen from the briefing that has been submitted.
16 We have not taken a separate appeal from the advance order.
17 We're not pursuing that. We are accepting that.

18 While there is in theory some risk of equitable
19 mootness from that, we don't consider it to be a significant
20 enough one that we are pursuing that. And so we are
21 exercising some judgment in terms of what risks of equitable
22 mootness we are willing to take and which not.

23 We also recognize that the framework that was
24 adopted with respect to the trust advance order had a -- and
25 in fact, also the structure that Judge McMahon adopted with

1 respect to her ruling involved having the various parties to
2 the appeal stipulate that they were not going to use these
3 matters as the basis for an argument for equitable mootness.
4 Now, we recognize that that is not bulletproof, that it's --

5 THE COURT: No, I actually think it is.

6 MR. GOLD: And the higher court could --

7 THE COURT: I --

8 MR. GOLD: The higher court could make its own
9 determination --

10 THE COURT: Yeah, I --

11 MR. GOLD: -- but again, we --

12 THE COURT: -- think it is pretty bulletproof. I
13 mean, again, my quote from Judge Kaplan was focusing on
14 constitutional mootness, which is really a different issue
15 --

16 MR. GOLD: Yes.

17 THE COURT: -- as opposed to equitable mootness.

18 It would seem to me very hard for anyone to rule that it was
19 equitable to hold something as causing mootness when the
20 very party that would benefit from that had stipulated that
21 it wouldn't. That would seem --

22 MR. GOLD: Right.

23 THE COURT: -- at the height of not being
24 equitable.

25 MR. GOLD: Your Honor, I have said very much the

1 same in my analysis of that question, although it's more
2 meaningful coming from Your Honor than it is from a mere
3 lawyer. The point I'm making is that if we -- so, if the
4 parties -- what we have been proposing was that the parties
5 stipulate that they would not seek to use the steps that we
6 are suggesting that we would be willing to negotiate with
7 them as the basis for an equitable mootness argument.

8 And while that is not nearly as bullet proof in
9 the context of payments going to parties as it is in the
10 context of establishing trusts or other such matters, we are
11 certainly willing to seriously consider taking the risk that
12 some other party might raise those things, notwithstanding
13 the party's stipulation. But we think that having the
14 parties stipulate to that would go a long way to allow that
15 to occur.

16 That's far from the situation where if we say
17 we're willing to allow certain things to go forward knowing
18 that the other parties, like say with the sentencing where
19 the Debtors have said let there be no mistake. When
20 sentencing occurs, we are going to insist that that has
21 equitable mootness concerns. That's a very different
22 analysis for us than something where the Debtors have
23 stipulated that they are not going to raise equitable
24 mootness.

25 So if the -- all I'm suggesting is that if these

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1 parties -- if their principal concern is in getting aid to
2 the victims, then they should be willing to work with us to
3 waive equitable mootness arguments and allow the payments to
4 go forward. If on the other hand --

5 THE COURT: No, that's fine. I understand your
6 point. Okay?

7 MR. GOLD: Okay, Your Honor. The -- Mr. Goldman
8 is going to be addressing the issues regarding the
9 declarations that have been submitted, so I will not further
10 extend this hearing by stating them myself. And the --
11 unless Your Honor has any questions, I don't think --

12 THE COURT: Well --

13 MR. GOLD: -- there's anything --

14 THE COURT: -- are one of you going to address the
15 bond issue?

16 MR. GOLD: I can do that, Your Honor. The -- we
17 submit that this case is governed by the plain language of
18 the rule that says a bond or other security is not required
19 when an appeal is taken by the United States, its officer,
20 its agency, or by direction of any department of the federal
21 government.

22 And we have here the -- that is our circumstance.
23 We are dealing with appeals that have been simultaneously or
24 substantially simultaneously filed by the U.S. Trustee,
25 which fits the category of the United States, its officer

1 agency, and by the states. We are raising substantially
2 similar issues, or I would say that the U.S. Trustee has
3 issued a broad panoply of issues that include the issues
4 that we are raising on our appeal, and that based on that,
5 no bond can be required on this consolidated appeal.

6 Certainly if the -- if no bond is applied or a
7 stay is granted for the U.S. Trustee, there should be no
8 bond for -- because the same stay will be in effect, and
9 it's the same stay that will be protecting the U.S. as well
10 as the states.

11 We also -- I don't have much to add to our
12 argument that there are other cases that recognize an
13 analogy between sovereign states and the U.S., although the
14 rule does not specifically mention them, and that therefore
15 finds it inappropriate to impose bonds on the states by
16 analogy. But that's -- though we finally -- we would simply
17 submit that the cases that the stay opponents founded were
18 -- had nothing to do with our circumstances, had to do with
19 bonds being required of non-government actors, and provide
20 no illumination on what the Court should be doing.

21 THE COURT: So what do you make of the committee
22 notes to Rule 8007(c) and (d), the 2014 committee notes,
23 which state that (c) and (d) retain the provisions of the
24 former rule to condition the granting of relief on the
25 posting of a bond by the Appellant except when that party is

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1 a federal government entity?

2 MR. GOLD: Well, Your Honor, I will make two
3 points here. I think that that -- first, I would say that
4 that comment is not directed to the circumstance where there
5 are simultaneous appeals by multiple parties, and that the
6 -- I would secondly point out that there is substantial case
7 law saying that what the Court should be looking at is the
8 language of the rule itself rather than the committee notes
9 that provide distinctions that were not included in the
10 language of the rule itself, and that because the U.S.
11 Trustee is entitled to an unbonded appeal here, it --
12 there's -- there should be no bond. There'll be no point in
13 having an additional bond when it's the same appeal.

14 THE COURT: So the general rationale for exempting
15 the United States from the bonding requirement is that most
16 judgments, and this is consistent with 28 U.S.C. 24
17 something -- the U.S. Trustee cites it -- is that the United
18 States is good for it because it's a judgment against the
19 United States, and the United States is always good for it.

20 Your interpretation of this rule would mean that
21 if there was a judgment against the United States and
22 against third parties, the third parties would have the
23 benefit of the United States being good for its portion of
24 it, and that they would have -- they could just have a free
25 ride on that, and the Plaintiff should take the risk?

1 MR. GOLD: Well, Your Honor, I'm not sure what the
2 judgment would --

3 THE COURT: No, I'm just talking about --

4 MR. GOLD: -- would be --

5 THE COURT: -- your interpretation of the rule,
6 which would include, I think, that scenario, which doesn't
7 seem to me to be a -- an interpretation that Congress would
8 want.

9 MR. GOLD: Well, Your Honor, when -- since we are
10 dealing here with states, and I don't believe that there's
11 any serious issue regarding collectability --

12 THE COURT: Actually, Judge Posner thought there
13 was in Lightfoot v. Walker, 797 F.2d 505 and 506 through 07
14 (7th Cir. 1986). So, anyway. But I guess there is the
15 issue as to what we've just been talking about is the
16 balance of the harms, and that balance may become
17 significantly greater as time goes on. Before then, the
18 Debtors have attempted to quantify that in the DelConte
19 declaration.

20 But I'm not sure -- well, it's really a question
21 for the Debtors as to the delay by three months, what does
22 that mean? But I think what it means is it's more on the
23 back end than the front end where there's significant loss.
24 But I don't think there's any doubt that the cost for a
25 lengthy delay of, you know, several months to a year or two

1 really is dramatic here in terms of dollars and cents. So
2 it would seem to me that, as time goes by, the need for a
3 bond grows dramatically to offset the vindication or not of
4 the Appellant's right on appeal.

5 MR. GOLD: Well, Your Honor, I guess that gets
6 back to the point that we discussed before why it may make
7 more sense to have Your Honor stay -- take us through the
8 relative short term when the costs are relatively contained
9 and lower and allow a later court that -- a higher court
10 that can have a better sense of how long it will be taking
11 on the appeal resolve that issue.

12 THE COURT: Okay.

13 MR. GOLD: Thank you, Your Honor. I have nothing
14 further to add at this point. I may have rebuttal points
15 after the Debtors or another party's presentation.

16 THE COURT: Okay.

17 MR. GOLDMAN: Your Honor, Irve Goldman, Pullman
18 and Comley for the State of Connecticut. May I be up next?

19 THE COURT: Yes, that's fine.

20 MR. GOLDMAN: Thank you, Your Honor. I first
21 wanted to just for Connecticut adopt the arguments that we
22 made by Mr. Gold for Washington and affirm that, you know,
23 the principal form of relief that we are seeking at this
24 point is our fallback, or what was previously described as a
25 fallback position.

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1 We are looking for a stay until 14 days after
2 Judge McMahon issues her ruling, which I would note may very
3 well come after December 8th, which is what the Debtors
4 described as the earliest point when the effective date can
5 occur, which is seven days after the 75th day after the date
6 of the confirmation order.

7 And it seems unlikely that it will come after that
8 date because we have oral argument, as Your Honor knows, on
9 November 30th, and Judge McMahon has advised us that she
10 starts a two-defendant criminal trial on December 7th. So
11 that would give her less than a week to get out what I would
12 anticipate is a very complex decision. So we would project
13 that it would likely come after that trial has concluded.
14 But I just want to circle --

15 THE COURT: What's on trial? It's oral argument.
16 Oh, the criminal trial.

17 MR. GOLDMAN: Yes, correct, Your Honor.

18 THE COURT: Well --

19 MR. GOLDMAN: That's what we were advised.

20 THE COURT: Okay.

21 MR. GOLDMAN: And if I could just circle back for
22 a moment to this apprehension that we have of equitable
23 mootness based on the Debtor's indication that they'll argue
24 the criminal sentencing will, you know, be the fulcrum for
25 that in a stipulation that was filed with the District Court

1 on October 20th that dealt with their commitment not to
2 argue that anything pursuant to the advance order or in the
3 preparatory stages leading up to the effective date, they
4 would not argue with the basis for equitable mootness.

5 It carved out in paragraph 2 the following
6 provision. The stipulation does not address the criminal
7 sentencing of Perdue or the effect or consequences of such
8 sentencing on these or other appeals. So currently, they
9 have signaled the intention to argue that, and I think the
10 stay of the confirmation order would be the most effective
11 way to prevent that from happening.

12 The reason I say that is because the plea
13 agreement itself provides that the parties, meaning Perdue
14 and USDOJ will agree to request that the sentencing hearing
15 take place no earlier than 75 days following the date of
16 confirmation. This contemplates a joint request. And so
17 that if there is a stay of the confirmation order, there
18 would be no reason for any party of the Debtors or the
19 United States to request a scheduling of the sentencing
20 hearing for the very reason that the Debtors have argued
21 that if they are sentenced and thereby become a convicted
22 felon, that would put their continued operation at jeopardy.

23 So I think the most effective way to deal with
24 that would be to stay the order. And I think Mr. Gold also
25 touched on this as part of the calculus of determining

1 whether there was irreparable harm. We contend the Court
2 should not only consider the risk of equitable mootness, but
3 the consequences that would ensue to the states if their
4 causes of action are eliminated, which is unquestionably
5 their property, not property of the estate. And in an
6 equitable mootness scenario, that property will have been
7 taken away without appellate review of whether the taking
8 was proper.

9 I know Your Honor has concluded that the states
10 will likely do better or will do better financially under
11 the plan than they would if they were permitted to go
12 against the Sacklers and other third parties. But that does
13 not account for the character of these release police power
14 claims as a deterrent to future wrongdoers and simply
15 assumes incorrectly that their value is purely financial.

16 Now, if I can turn to the balance of the harms,
17 and specifically the declarations that have been submitted
18 by the various parties. As Your Honor is aware, we've made
19 some discreet, detailed objections to the admissibility of
20 some portion of the declarations, and which of course must
21 follow the Rules of Evidence. Everyone's trying to
22 establish a record here, and so applying the Rules of
23 Evidence is important in this context.

24 And under the Rules, the testimony offered by a
25 declaration has to be based on personal knowledge, not

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1 hearsay. The sufficiency of personal knowledge has to be
2 established by what is in the declaration. It can't contain
3 conclusory statements or arguments. It has to set forth
4 specific facts. And to the extent a lay opinion is offered,
5 it has to be based on the declarant's own person knowledge
6 and must not be based on specialized knowledge. And all the
7 declarations, to one degree or another, fails to satisfy one
8 or more of those requirements.

9 Mr. DelConte's declaration, for example, talks
10 about operational risk to the Debtors. He first says that
11 the State could result in delay in bringing about public
12 initiatives to market. He says "could". He doesn't say
13 what initiatives are being planned to go to market during
14 the period of any stay, no facts establishing what his
15 personal knowledge of what the initiatives are. He's
16 obviously not a member of Perdue's public initiative group.

17 Granted, he is a financial advisor for the
18 company, but I think here he is being used as a type of all-
19 purpose as an expert for all things Perdue. And I don't
20 think that he can be used to just say in a conclusory
21 fashion some unspecified initiatives will be delayed during
22 a period of the stay we're requesting. In part four of the
23 declaration --

24 THE COURT: Well, they would certainly be delayed
25 if the Debtors weren't able to engage in any business, right

1 because of the criminal plea?

2 MR. GOLDMAN: Well, if they pled -- correct. If
3 they were a convicted felon, according to the Debtors, that
4 would restrict -- eventually, maybe not automatically as I'm
5 told, but eventually it would lead to the termination of
6 their licenses and the ability to do business unless the
7 properties could be transferred to NewCo at that point.

8 But as I had indicated, Your Honor, if Your Honor
9 stays the order for the period we're requesting, it is
10 highly unlikely that that criminal sentencing will take
11 place during the period of that stay. And again, those
12 unspecified initiatives that he says aren't -- will be
13 delayed --

14 THE COURT: That's not really an evidentiary
15 objection. You're just objecting to the fact that it
16 doesn't say very much, and I get that. I understand that,
17 but that's not an evidentiary objection.

18 MR. GOLDMAN: Then I'll move on, Your Honor, to
19 what I think is an evidentiary objection. It's part 4 of
20 the declaration, which is a recitation of what Mr. DelConte
21 believes could be the operational risks if the stay is
22 granted. Based on how upset the employees, vendors, and
23 customers would be if there was a delay occasioned by the
24 stay, clearly that's based on what he was told the Debtors
25 told their customers, vendors, and employees.

1 And certainly, Mr. DelConte is not competent to
2 testify as to how other parties, namely the customers,
3 vendors, and employees, would react to a stay of limited
4 duration, particularly when they have certainly hung in
5 there and not walked away during the two-plus years that
6 this case is undergoing Chapter 11. There's certainly no
7 basis for believing that now suddenly that the -- whether a
8 confirmation order has been appealed, that they wouldn't
9 tolerate a few additional months of delay.

10 In fact, if anything, there was greater
11 uncertainty in terms of what would happen with the --

12 THE COURT: Mr. Goldman, can I interrupt you? Are
13 you testifying now --

14 MR. GOLDMAN: Certainly.

15 THE COURT: -- or are you making argument based on
16 your assessment of how people think?

17 MR. GOLDMAN: Well, that is argument, Your Honor.

18 THE COURT: And that's how I would treat this.

19 MR. GOLDMAN: And --

20 THE COURT: This is his prediction based on his
21 knowledge of the Debtor's business of what would happen.
22 Not what will happen, but his prediction.

23 MR. GOLDMAN: Well, again, I think that that -- he
24 wasn't offered as an expert, and I think he is testifying
25 based on what he was told. And --

1 THE COURT: Well, that's what you're saying too.

2 I'm just saying it's a prediction.

3 MR. GOLDMAN: Well, Your Honor, I'm not offering
4 my argument as testimony yet, but he is.

5 THE COURT: Well, only for this --

6 MR. GOLDMAN: So --

7 THE COURT: -- I will treat only for that purpose
8 is what he reasonably believes based on his knowledge of the
9 company.

10 MR. GOLDMAN: Let me move on to Mr. Gard. And in
11 paragraph 3, again, this really goes over what Mr. DelConte
12 testified to, and that it's his belief that a delay, though
13 materially, would give us Perdue's residual value and
14 talking about the uncertainty of the bankruptcy process.
15 Again, he -- this is lay opinion. It's not supported by
16 facts establishing it's within his personal knowledge.

17 And this is in the province of experts to say what
18 Perdue's residual value might be given the uncertainty and
19 delay of -- and stay of the limited duration that we're
20 requesting. And in paragraphs 14 and 16, he offers the
21 prediction that as a result of the delayed distributions
22 during the stay, it's quite possible that additional
23 Americans will die, and then suggest that a stay will allow
24 Americans to needlessly die, who would not have died but for
25 a stay.

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1 Now, this is obvious argument as well and not
2 fact. I mean, evidence of widespread death as a result of
3 stay of limited duration has got to be based --

4 THE COURT: Well, again --

5 MR. GOLDMAN: -- on more than --

6 THE COURT: -- it depends on what the length of
7 the stay is. I just -- look, on your first point, the only
8 example that he gives for the effect of a stay is if the
9 plea goes forward without the plan being implemented. And
10 to me that is a meaningful effect. To the extent he's
11 talking about other effects on keeping senior employees, I
12 agree with you.

13 I don't think he's really -- unlike Mr. DelConte,
14 he's not really in a position, you know, other than anyone
15 else or different than anyone else to talk about that point.
16 But on the plea point, I understand his point.

17 And then, look, the testimony is based upon I
18 think an undisputed fact that roughly 200 opioid-related
19 overdose deaths occur, and that those deaths have been
20 increasing at remarkable percentage rates over the last
21 couple of years. And I think he and -- he is perfectly
22 positioned to discuss that point given his job, which he's
23 required to assess how best to deal with that issue for his
24 state.

25 And I take, again, his prediction that at some

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1 point -- and he doesn't really say when that point is, but
2 at some point, a stay can lead to additional deaths if it
3 results in a meaningful delay of funds. I don't see how
4 anyone could dispute that.

5 MR. GOLDMAN: Your Honor, I do -- the point I'm
6 trying to make here is that Mr. Gar and the other
7 declarations are trying to draw a causal connection here
8 then because distributions will be delayed, that will result
9 in grievous harm. And there just -- that really is in the
10 province of experts.

11 What will happen, they haven't said the amount of
12 funds that are going to be delayed. What would otherwise be
13 disbursed and used by the various constituents --

14 THE COURT: The record is --

15 MR. GOLDMAN: -- during period of --

16 THE COURT: The record is crystal clear that every
17 dollar counts because there is no surplus. If that weren't
18 the case, then your client's lawsuits are meaningless. This
19 is a really strange exercise, Mr. Goldman, I have to say.

20 MR. GOLDMAN: Well, I make --

21 THE COURT: And I guess --

22 MR. GOLDMAN: -- they're --

23 THE COURT: -- what you're saying is your clients
24 really don't think this money counts?

25 MR. GOLDMAN: No, that is not --

1 THE COURT: Is that what you're --

2 MR. GOLDMAN: -- what I'm saying, Your Honor.

3 THE COURT: -- ultimately saying here in terms of
4 saving lives and addressing the opioid crisis?

5 MR. GOLDMAN: No, it is not, and I would
6 acknowledge that it certainly does count. The point I'm
7 trying to make is that they are trying to translate that
8 into grievous harm based on not knowing what the amount is
9 going to be disbursed during this limited duration and for
10 what purposes.

11 THE COURT: But he wasn't responding to just a
12 limited duration. The motion sought a stay through the
13 entire appeal process through the Supreme Court. So these
14 declarations address through the end of 2023 and through the
15 end of 2024. I agree with you. If you're looking for or if
16 I'm considering a shorter injunction, then this information,
17 although still meaningful because if anyone dies, that
18 pretty important.

19 MR. GOLDMAN: Yes.

20 THE COURT: Plus all of the other societal harms
21 that flow from not having the funding start. But if the
22 funding isn't really going to start in any event until --
23 let's pick a date. And I'm not talking about the effective
24 date now, I'm talking about when funding would actually
25 start. Let's say that's January 1, then your point is a

1 point on argument, not an evidentiary point, which is that
2 this declaration doesn't say that there's any harm
3 specifically before January 1 because it doesn't establish
4 that the funding would start then -- before then.

5 MR. GOLDMAN: Well, that is what my argument is
6 directed to.

7 THE COURT: All right, but --

8 MR. GOLDMAN: -- Your Honor. I understand --

9 THE COURT: -- I don't think that's an evidentiary
10 point. I think that's an argument. That's a point you can
11 make in argument.

12 MR. GOLDMAN: Very well, Your Honor. I'll -- I
13 will move on. And I would echo what Mr. Gold had said is
14 that even beyond that date, we would welcome any sort of
15 interim measures for disbursing funds for abatement and
16 other purposes, similar to the ERF. An ERF2, if you will --

17 THE COURT: Well, the ERF didn't happen --

18 MR. GOLDMAN: -- and could even be --

19 THE COURT: -- so but I take your statement now
20 seriously.

21 MR. GOLDMAN: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. GOLDMAN: I was just going to make the point
24 it could be implemented pursuant to 363(b) and not pursuant
25 to the plan to remove any idea that it would be -- cause

1 equitable moot.

2 THE COURT: Okay.

3 MR. GOLDMAN: Just moving onto the declarations
4 that the UCC submitted, I think we -- from the two members
5 who have experienced firsthand the devastating effects of
6 the opioid epidemic, I think that, you know, it has to be
7 acknowledged that of all the people who have a right to
8 express an opinion on what will occur due to the opioid
9 epidemic if a stay is issued, is these two people.

10 However, that does not make certain parts of their
11 declarations admissible, which is really what we have the
12 objection to. I think, you know, they have to be given all
13 the solicitudes for the personal loss they've suffered and
14 admiration for what they have turned that into in terms of
15 positive giveback. And I hope the objections or challenges
16 to certain portions of their declarations will be taken in
17 that vein. They're simply technical in nature in terms of
18 establishing what record is made on these proceedings.

19 THE COURT: Well, again, I mean, I think you're
20 objecting to one of the declarants saying that various forms
21 of treatment have stopped over the last year or the last
22 several months for want of funding. And asking me to draw
23 an inference that, under the plan, similar occurrences
24 wouldn't -- would be prevented in the future, I think she --
25 again, I think that the witness can make a prediction of

1 that. You know, take it for what it's worth.

2 She's much closer in my mind to the facts that she
3 outlines than just someone who isn't looking at it from the
4 outside. But ultimately, I think it's the same point, which
5 is it depends on when the funds start flowing and what can
6 only make an educated prediction, which is certainly what
7 the members of the UCC, including these two people, did and
8 are doing. So that's how I treat those types of statements.

9 MR. GOLDMAN: I would just reiterate the point,
10 Your Honor. There is going to be evidence that there is
11 incalculable loss, which is the way it's phrased in one of
12 the declarations. And I really think it should be the
13 province of expert testimony. It is based on some
14 specialized knowledge as to a prediction of what is going to
15 occur and (indiscernible).

16 THE COURT: Well, but again, I -- look, I guess it
17 depends on what you mean by the term "incalculable". You
18 could certainly calculate the monetary costs of someone
19 dying and their relatives having to take care of their
20 children. But it is perfectly legitimate to say that
21 actually isn't calculable. It may be calculable for
22 purposes of posting a bond, but I don't think these two
23 declarations are submitted for that purpose, for determining
24 what the amount of a bond would be.

25 I think they're submitted for the point, which I

1 view as one that is adequately supported, that where you
2 have this number of deaths due to opioid overdoses occurring
3 on a daily basis, and you have insufficient funds as
4 acknowledged by all of the lawsuits, including by the State
5 of Washington and the State of Connecticut, that the more
6 money you have, the fewer people will die. I mean, I don't
7 see how you can dispute that.

8 And maybe it's one person. Maybe it's 100, but to
9 me that's incalculable, and it's -- it pretty -- I think it
10 does offset in terms of the balance of the harms, someone's
11 right to pursue their appellate rights to the Supreme Court
12 where the Supreme Court has denied certiorari on these
13 various issues multiple times in the last decade. So again,
14 that applies primarily, if not entirely -- and I'll hear the
15 Debtors on this, of course, and the other parties, including
16 the UCC's counsel, to the request for an injunction through
17 the entire appellate process.

18 It may not apply in a meaningful way to an
19 injunction through a ruling by the District Court where it's
20 not clear to me that money would be flowing in any event
21 during that period as opposed to personal injury claims
22 being liquidated, as opposed to the 14 days when the
23 abatement procedures after the effective date are supposed
24 to be submitted, etc.

25 But I just -- I don't understand how in one breath

1 the State Attorneys General of Connecticut, Washington, and
2 Maryland can say that their rights to decide for themselves
3 how to pursue monetary claims against the released parties
4 are of critical importance without focusing on the
5 consequences of the delay caused by the -- that right.

6 MR. GOLDMAN: Well, Your Honor, it's one of the
7 reasons why we did restrict and scale back the request
8 that's before you now.

9 THE COURT: Okay. But I'm not going to --

10 MR. GOLDMAN: Which is a --

11 THE COURT: I'm not going to exclude anything in
12 these two declarations other than, again, where obviously
13 the declarant is making a prediction or stating her view as
14 to the cause of something. It's not for the truth, but
15 rather for her evaluation of that cause or prediction, which
16 is what people who serve on unsecured Creditors' committee,
17 including this one, that net 200 times and over 700 separate
18 communications does.

19 MR. GOLDMAN: So except, Your Honor, that is all I
20 have.

21 THE COURT: Okay. All right.

22 MR. EDMUNDS: Your Honor, if I --

23 THE COURT: Go --

24 MR. EDMUNDS: This is the --

25 THE COURT: Why don't you go ahead, Mr. Edmunds --

1 MR. EDMUNDS: Oh, I'm sorry. Go ahead.

2 THE COURT: -- and then I'll hear from Mr.
3 Underwood?

4 MR. EDMUNDS: Okay. I just -- I -- thank you,
5 Your Honor. I will just try to hit on some points that go
6 to the second part of my argument that haven't been said so
7 far to try to make it quicker. But I think that one issue
8 that's been identified is the critical importance of the
9 sentencing that it may have in creating a possibility of
10 equitable mootness. And people have talked about already
11 and argued that there is a chance there, including from some
12 of the effects of the sentencing upon the Debtors, that may
13 produce the grounds for equitable mootness may create
14 irreparable harm.

15 But there's one other thing that people haven't
16 talked about yet, and that -- and I am not an expert, but I
17 have some experience with the difficulty of changing a
18 sentence once it's imposed. There are constitutional,
19 statutory, and federal criminal procedures, doctrines and
20 issues that arise that may make it hard to undo a sentencing
21 once it's in place. And I think that that may be one of the
22 sources for the Debtor's clearly apparent position that, you
23 know, that they will not agree that this -- to any
24 stipulation against the equitable mootness of the effect of
25 the sentencing of Perdue in the District of New Jersey.

1 I think that that's a huge issue that happens
2 before the effective date that could be significant in its
3 effects. And I don't pretend to know everything about it.
4 I don't know the criminal doctrines.

5 THE COURT: Let's just move on. Okay. You raised
6 the point, but there's no reason talking about it further if
7 that's the extent of your knowledge. So we should move on.

8 MR. EDMUNDS: Well, I think -- I mean, I think,
9 you know, the basics of it, the due process clause, the
10 double jeopardy clause, Federal Rule 35, and certain
11 provisions of the U.S. Code do place limits on it. I think
12 that that's -- I mean, in part, it's hard to anticipate
13 where that will go in advance, and everybody has that same
14 difficulty. So I think that's an issue there, and I think
15 others have talked about the immediate effect on Perdue and
16 its business.

17 The -- our -- moving on, our motion raised other
18 issues of irreparable harm that are not related to -- and we
19 did not rely on the possibility of equitable mootness. We
20 talked about in our original motion in September, the cost
21 to the estate of going forward with a plan that may be
22 altered or reversed on appeal. And part of that was related
23 to the trust advances issues, but it's also related to the
24 fact that if you look at the fee statements that are coming
25 in, a whole lot of money is being spent on attorneys' fees

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1 from the estate to reimburse the pursuit of the plan, things
2 that may --

3 THE COURT: Mr. Edmunds, I've never seen that as a
4 basis for irreparable harm to an Appellant. Ever. And --

5 MR. EDMUNDS: I think that the --

6 THE COURT: -- frankly, it goes to the assessment
7 of merits. So I guess to me, that just doesn't make sense,
8 that argument.

9 MR. EDMUNDS: I mean, I -- the point I would make,
10 Your Honor, is that if potentially millions in fees are
11 expended from the estate in pursuit of implementing the
12 plan, that's money that the estate doesn't get back. It may
13 not -- in fact, I'm -- I agree it would not equitably moot
14 an appeal, but --

15 THE COURT: It's not anything of an equitable
16 mootness.

17 MR. EDMUNDS: But it is still irreparable harm.

18 THE COURT: It's not a basis for irreparable harm.
19 It's not -- cite me one case on that point.

20 MR. EDMUNDS: We really don't have a case, Your
21 Honor. It's just --

22 THE COURT: Then please move on.

23 MR. EDMUNDS: -- logical that if the estate --

24 THE COURT: That is not a basis for irreparable
25 harm. It just isn't.

1 MR. EDMUNDS: All right. I will move on. The
2 other irreparable harm that exists, though, is I think the
3 possibility of implementing the plan and changing
4 relationships, and then you're having to roll it back if
5 it's changed or if it's reversed.

6 THE COURT: Is that another word for mootness.

7 MR. EDMUNDS: No.

8 THE COURT: No?

9 MR. EDMUNDS: I don't think it is, Your Honor. I
10 think that there are things that the Court has ruled, and
11 Debtors have stipulated that don't constitute irreparable
12 harm that are happening -- or that don't constitute a ground
13 for equitable mootness that are happening right now that do
14 constitute a potential irreparable harm. How significant
15 they are --

16 THE COURT: Like what?

17 MR. EDMUNDS: -- is I think --

18 THE COURT: What are you talking about?

19 MR. EDMUNDS: They are, to the best of my
20 understanding, going about forming structures, registering.
21 I understand that there is regulatory activity that is
22 involved on the sort of licensing side. They are -- and
23 they're continuing their operations, moving forward with
24 operations amid uncertainty. And there's been a lot of, I
25 guess, question in the papers of whether there's evidence of

1 the effects of that uncertainty on the business.

2 But I would point out that these are the very
3 things that they use to justify their first day motions.

4 And the -- in docket number 3, the declaration of John Lowne
5 changing things --

6 THE COURT: So can I interrupt --

7 MR. EDMUNDS: -- changing their cash management --

8 THE COURT: -- you? So is --

9 MR. EDMUNDS: -- systems.

10 THE COURT: Is the State of Maryland not amenable
11 unlike the State of Washington and the State of Connecticut
12 to permitting new code to be formed, for example? The types
13 of stipulations that Mr. Gold and Mr. Goldman were referring
14 to.

15 MR. EDMUNDS: I think I'd have to -- we are
16 amenable to some form of agreement, but I think I would have
17 to look at the precise contours of that and make an
18 evaluation as to how serious it was. So not as I sit here
19 today, I don't think I can agree to that without some sort
20 of detail about what it is.

21 You know, it -- there are risks and there are
22 harms inherent in anything that happens, and I think it
23 requires sort of a precise evaluation as to whether we would
24 agree to that. And I'm just not -- I don't even know
25 exactly what the requirements or what the permissions would

1 be.

2 THE COURT: Well, the general concept would be
3 that -- and I believe Mr. Gold laid this out -- that the
4 appellees would not argue equitable mootness based upon a
5 transfer of the Debtor's business as provided for under the
6 plan to NewCo and making the initial distribution under the
7 plan. Either under the plan or in the form of a 363 motion.

8 MR. EDMUNDS: Your Honor, I mean, I think that the
9 -- things that significant, there may be ways you could --
10 nuances that you can remove from it, but I think that things
11 that significant carry with them the possibility of
12 irreparable harm. Both from the possibility of mootness and
13 from the sheer fact that you might be unwinding, which
14 independent of equitable mootness will cause some amount of
15 loss. And it may not add up to the amount of loss that
16 would --

17 THE COURT: Let me make sure I understand --

18 MR. EDMUNDS: -- could be substantial
19 consummations.

20 THE COURT: -- this. You lost below, right? You
21 lost. You're now seeking a stay pending appeal, and yet
22 you're arguing that if you win, which is an "if", the cost
23 of unwinding itself is irreparable harm? That's really what
24 you're saying?

25 MR. EDMUNDS: I think that there are costs

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1 associated with going forward now, both to the estate and to
2 everyone else, that warrant consideration as part of the
3 balance of hardships that --

4 THE COURT: So you're saying irreparable harm
5 would --

6 MR. EDMUNDS: -- you know, that the Court has to
7 undertake.

8 THE COURT: You're saying irreparable harm is
9 literally proceeding with the order itself.

10 MR. EDMUNDS: I think -- again, I would have to
11 look at the details of the --

12 THE COURT: Mr. Edmunds --

13 MR. EDMUNDS: -- specific exceptions.

14 THE COURT: -- look, do you have anything more to
15 say on any --

16 MR. EDMUNDS: Yeah, that's usually --

17 THE COURT: Do you have anything more to say --

18 MR. EDMUNDS: I do.

19 THE COURT: -- on this point or any other point?

20 MR. EDMUNDS: I do, Your Honor. I mean --

21 THE COURT: All right.

22 MR. EDMUNDS: -- I will try to move on from it,
23 but let -- but I would say -- I would note that the very
24 hardships that I'm talking about are written throughout
25 their first-day motions and in the declarations that they

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1 submitted in support of that. They talk about changing
2 structure and changing organization and changing management.

3 THE COURT: But that's before they won, and your
4 state is appealing it. It's a big difference, so move on.
5 Honestly.

6 MR. EDMUNDS: I think the hardships --

7 THE COURT: You know, this wasn't made in your
8 objection.

9 MR. EDMUNDS: -- as a matter of fact, so --

10 THE COURT: This wasn't made in your motion or
11 your reply, and if it was, it would've just been devastated.
12 So move on. This is just silly.

13 MR. EDMUNDS: It was -- just to be clear, Your
14 Honor, it was in our motion. And we did not rely on
15 equitable mootness, but I will move on.

16 I would also just talk briefly about the issue of
17 the irreparable harm that the appellees raised, the
18 objectors raised. I think the Court is correct that we all
19 see it as getting more money for the abatement, for the
20 opioid crisis, and to address the opioid crisis is
21 important. But there are other trades that are made in
22 pursuit of this plan that I think make it hard for them to
23 establish that the harm that they suggest will occur will
24 actually occur from a short stay --

25 THE COURT: Okay. We covered --

1 MR. EDMUNDS: -- to the appellate process.

2 THE COURT: We covered this, Mr. Edmunds. I -- we
3 -- we've covered this point. And in fact, I generally
4 agreed with the other -- with your colleagues on this. So I
5 don't think we need to go over this again.

6 MR. EDMUNDS: Well, I'd just say that there is the
7 deterrence effect and there are the other, I think, benefits
8 from doing more, that the State of Maryland at least sees
9 from proceeding to do more to enforce its laws. And I think
10 that those have sort of a canceling effect on, you know, any
11 hardship that -- concrete hardship that could be raised by
12 the other parties.

13 So with that, I will -- I think those are the
14 critical points, and I'll rely on others for their previous
15 arguments.

16 THE COURT: Okay. Thank you.

17 MR. BASS: Judge Drain, this is Mr. Bass, Ronald
18 Bass. May I come in?

19 THE COURT: Well, I -- someone was actually in the
20 queue before you. Let's do Mr. Underwood first.

21 MR. BASS: Oh, okay.

22 THE COURT: And then we'll -- I'll hear from you.

23 MR. BASS: Okay. Okay.

24 MR. UNDERWOOD: Thank you, Your Honor. Allen
25 Underwood, on behalf of Canadian municipalities -- certain

1 Canadian municipalities and First Nation creditors.

2 Very briefly, I'd like to again adopt the
3 positions of Connecticut and Washington as stated here and
4 in their papers. I think what's very important and what
5 we've emphasized throughout this case is that the Canadian
6 municipalities and First Nations are a little different than
7 the states with regard to certain legal issues. And that
8 has an impact on, A, what Judge McMahon is deciding but it
9 also has an impact on the irreparable harm issue that we're
10 -- I think we're discussing. There's no question that the
11 Canadian municipalities have read direct claims against non-
12 debtor, shareholder released parties.

13 THE COURT: I think there's a substantial
14 question, and that's what I found in my ruling.

15 MR. UNDERWOOD: I believe under Canadian law, they
16 have claims under the Competition Act, that -- it's a fairly
17 broad act that enables direct claims against -- and this is
18 I guess a fundamental problem, Judge, is that we've got a
19 corporate structure that has parallel ownership.

20 It's not -- it's not like a typical subsidiary
21 relationship. One -- is controlling multiple --
22 corporations. In effect, the shareholder -- whether through
23 non-debtor entities that are U.S. entities or direct action
24 on boards -- are controlling those entities. And under
25 Canadian law, there's a basis for direct claim against those

1 parties.

2 Obviously the problem or the question or the
3 interpretation of the plan and whether or not the release as
4 granted occupies the territory fully -- that's the
5 structural problem -- the appeal is we believe meritorious.
6 And ultimately -- irreparable harm which is that ultimately
7 these Canadian creditors stand to lose the claims they may
8 have against U.S. non-debtor entities or U.S. released
9 shareholders -- confirmed plan.

10 It's a structural problem. It's a structural
11 problem that the debtors and the Sacklers created when they
12 created their corporate structure. That's all it is. I
13 wish I could change it.

14 THE COURT: Well, all I will note is I don't think
15 you addressed this legal argument on the nature of the
16 Canadian creditors' claims anywhere in your motion.

17 MR. UNDERWOOD: I actually believe that there is a
18 reference.

19 THE COURT: Where is it?

20 MR. UNDERWOOD: Within -- certainly within my
21 reply. I actually quote a portion of the brief. I think --
22 let me pull up the page that referenced this issue. It's
23 cited in the reply, Your Honor. And it's more than alluded
24 to in the actual motion.

25 And to remind you, Your Honor, the motion was

1 actually filed in advance of the briefing before the
2 district court. So I believe if we look at, yeah, Page 4,
3 Paragraph 8.

4 THE COURT: Okay. I see it.

5 MR. UNDERWOOD: So there is a colorable basis for
6 a claim by my clients against non-debtor, third-party
7 released parties. And irreparable harm, as we cited in the
8 reply and I think in the moving papers, is the loss of that
9 financial claim or right.

10 So that's a principal question that I think in the
11 first instance you're looking for which is what is the
12 irreparable injury in the absence of a stay. And that is
13 obviously the concern.

14 I think in terms of the resolution of the matter,
15 I think Your Honor is very thoughtful on this question of a
16 longer stay versus a shorter stay, a stay through finality
17 versus a stay more or less governed by a Rule 8025. And
18 certainly I think that the Canadian appellants take the
19 position that a stay 14 days -- through 14 days after the
20 rendering of the district court decision is more than
21 adequate at this time.

22 But I do think it is a thoughtful question by Your
23 Honor because honestly the circumstance where a trial court
24 would be looking at whether or not to stay its own decision
25 for longer than any determination that might be made by an

1 appellate court would be a circumstance where the trial
2 court recognized that there's some aspect, be it
3 constitutional or structural, in the plan that would be
4 jeopardized were it not stayed, meaning that there's
5 something about it that deserves finality. And I would
6 leave that question to Your Honor's best judgment.

7 But I would also repeat that in terms of the stay,
8 the lesser of the two alternatives that Your Honor described
9 is certainly -- is certainly acceptable to the First
10 Nations, without waiving whatever Your Honor might decide
11 about a longer or a larger stay.

12 I think there's a fundamental interesting question
13 with regard to the sentencing and the plea agreement, and it
14 is a problem. And I think in terms of it, I've read the
15 plea agreement many times. I see it as little more than a
16 financial settlement, and that's what we do in this court.
17 And ultimately I'm not aware of due process issues that
18 would bar a stay through the date of sentencing with regard
19 to the defendants.

20 I think it makes a huge amount of sense because
21 whether or not the sentencing gives rise to equitable
22 mootness is going to impact what may happen subsequent to
23 the appellate process because obviously you've got your
24 superpriority claim that may come into effect if for any
25 reason the terms of the plan are modified such that -- you

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1 know, such that the plea is -- the plan isn't funded. So
2 that would be the concern.

3 So although certainly the Canadian First Nations
4 agree that the lesser of the two stays that Your Honor had
5 explained would be sufficient here, I would request that the
6 Court be mindful of the fact that the sentencing will have a
7 material impact on this case and, depending upon the results
8 of the appellate process, it may completely impact whether
9 or not the assets of the debtor can be liquidated and how,
10 if it came to that -- I don't think anybody wants it to come
11 to that, but if it did, the fact that the sentencing had
12 gone forward might be a problem if it's not a basis for
13 equitable mootness.

14 So ultimately, Your Honor, I mean, I think that's,
15 you know, by in large the points that I wanted to make or
16 things that perhaps I wanted to highlight from our concern.
17 Ultimately I think the harm that we have here is an
18 interesting circumstance of -- so effectively the IACs are
19 non-debtor parties.

20 Those are the assets that in part, over time, will
21 fund the trust in the United States. My clients are
22 presently stayed from pursuing those assets. Whether or not
23 that remains to be the case will be the subject I suppose --
24 and the determination before the CCAA court in Canada which
25 is pending for December 1. And that's another example.

1 I'm not sure if it's irreparable harm. But it is
2 an instance of another intervening deadline with regard to
3 an international matter where it might be worth the
4 consideration of the Court of the fact that a stay here
5 would probably relieve that Canadian court of a difficult
6 decision. And maybe I'm wrong. I don't know. But that
7 would be my take on it.

8 So, but ultimately I think the debtor has
9 ultimately the benefit of these IAC assets. These are
10 assets that ultimately my clients would be seeking to
11 recover from if they're permitted to do so by way of appeal
12 or before the CCAA court.

13 And I'm making this argument with reference to the
14 bond issue because, first of all, I'm not aware of the
15 debtor having an affirmative claim against the CMFN.
16 Frankly if they're sovereigns, there's a question of whether
17 or not there would be an applicable need for a bond under
18 that circumstance.

19 But ultimately what's interesting is that it's
20 arguable that the debtors in fact have a lien on Canadian
21 assets by virtue of the settlement such that I would say
22 whether or not Your Honor finds a need for posting of a bond
23 by any other appellate creditor here, ultimately because of
24 the fact that these Canadian assets are dedicated under the
25 existing plan and settlement and trust to the debtor, that I

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1 think there's a strong argument that the debtor is protected
2 and there should be no need for an appellate bond with
3 regard to the Canadian creditors here. That's all I have to
4 say --

5 THE COURT: I'm sorry. What Canadian assets are
6 you referring to?

7 MR. UNDERWOOD: Purdue Canada. At a bare minimum,
8 Purdue Canada because it's dedicated to -- you know, to sale
9 and contribution to the debtor. I can't -- I can't speak,
10 and don't want to speak directly to the extent to which
11 Purdue Canada has been securitized pursuant to those
12 settlement agreements. But it may have been.

13 THE COURT: But the bond would be to protect
14 against the damage, if any, caused by the delay or any other
15 factor that the stay would occasion. So it would be
16 something beyond what the debtors already have.

17 MR. UNDERWOOD: Right. But that's presuming that
18 there is -- I think the argument would be that -- and I do
19 think there's some case law to this effect, that, in effect,
20 the debtors already have a form of a lien. I agree --

21 THE COURT: But it's not a lien on your clients'
22 assets. It's their own assets.

23 MR. UNDERWOOD: It's not --

24 THE COURT: They already have it. They already --
25 no, but they already have it. The bond would be to bond

1 against damage that your clients would cause.

2 MR. UNDERWOOD: Right. I would -- I would differ.

3 But thank you, Your Honor. I appreciate your --

4 THE COURT: Well, I mean, that was the result in

5 the Adelphia case. Okay. Just 361 B.R. 337, S.D.N.Y.

6 (2007). Excuse me. Okay. Thank you, Mr. Underwood.

7 MR. UNDERWOOD: Thank you, Your Honor.

8 THE COURT: Okay. Mr. Bass, are you still there?

9 MR. BASS: Yes. I'm here. I'm here, Your Honor.

10 THE COURT: Okay. All right.

11 MR. BASS: Well, I also filed a motion for a stay.

12 Go ahead. What were you saying? I apologize.

13 THE COURT: No. I can hear you fine.

14 MR. BASS: Oh, okay. I had filed a motion for a
15 stay, and I have gotten an order from Judge McMahon to have
16 my briefing on the 19th. So I asked her an extension of
17 time. So I'm asking you wait until she hear my motion -- I
18 mean my brief, then we can proceed. So that's what I'm
19 waiting for, her order of an extension of time.

20 THE COURT: Okay. Well --

21 MR. BASS: Besides -- one more thing. And I'm
22 trying to get that merged. The cases that I have in the
23 bankruptcy court with the Mallinckrodt to merge it with this
24 here so she can handle both of them -- both of them, both of
25 the cases.

1 THE COURT: All right. Okay. Anything else?

2 MR. BASS: No. I'm just waiting for -- you know,
3 grant me the -- that order to stay as well as adopt the
4 position --

5 THE COURT: I'm sorry. I heard you through, "As
6 well as you adopt," and then I couldn't hear the rest.

7 MR. BASS: No. I said adopt the position of
8 Lauren (ph), the attorney, the female attorney who came on,
9 I said I am adopting -- I am adopting her position.

10 THE COURT: Okay.

11 MR. BASS: -- against the shareholders and, you
12 know --

13 THE COURT: Okay. All right. Well, on your first
14 point, the briefing schedule set by Judge McMahon on your
15 appeal of the confirmation order is not the subject of a --
16 it's not something that I can stay. It's not my order, and
17 it's not really covered by the bankruptcy rules. That's
18 something you'll have to take up with her --

19 MR. BASS: Right.

20 THE COURT: -- whether you get an extension or
21 not. So that's not really an appropriate subject for a stay
22 that I would be considering.

23 MR. BASS: Okay.

24 THE COURT: And the same goes for your desire to
25 have the district court consider together your appeal of the

1 confirmation order and the other litigation that was the
2 subject of your motion that I heard back in mid-October.

3 MR. BASS: Right.

4 THE COURT: And I denied that motion in an order
5 entered on October 15th that's at Docket Number 3958.

6 MR. BASS: Right.

7 THE COURT: But again, if any of that litigation
8 is to be consolidated with your appeal, that's really up to
9 Judge McMahon. It's not -- it's not something that I could
10 rule on.

11 MR. BASS: Oh, all right.

12 THE COURT: Okay. Okay. I think the only movant
13 that I haven't heard from is Ms. Isaacs, who adopted the
14 motion filed by the State of Washington, and of course we've
15 heard the State of Washington and the State of Connecticut
16 at length. So I don't know if you have anything further,
17 Ms. Isaacs, to say. No? All right.

18 It's quarter to 2:00. We've obviously been going
19 for a long time. I'm going to take a break for lunch, and
20 be back at 2:30, at which point I'll hear from the
21 objectants and, if warranted, brief rebuttal. And then I'll
22 give you my ruling.

23 (Recess)

24 THE COURT: Okay. Good afternoon. We're back on
25 the record In re Purdue Pharma, LP, et al, and the motions

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1 by various parties, various Appellants, for a stay pending
2 appeal of my confirmation order in the so-called advance
3 order or preparations order. And we're turning to the
4 objectors at this point.

5 MR. KAMINETZKY: Good afternoon, Your Honor.

6 Benjamin Kaminetzky, of Davis Polk, for the Debtors. I see
7 Ms. Isaacs is on the line.

8 THE COURT: Okay.

9 MR. KAMINETZKY: Do you want to --

10 THE COURT: Well, I had asked whether Ms. --
11 before we broke, I had asked Ms. Isaacs whether she wanted
12 to add anything to her motion, which adopted the motion by
13 the State of Connecticut and the State of Washington and
14 didn't get a response. So, Ms. Isaac, I don't know if you
15 have anything more to add to what you filed? You're on
16 moot.

17 MS. ISAACS: I'm sorry. Thank you for taking the
18 time to hear me this afternoon. I understand you called me
19 before lunch break.

20 THE COURT: Yes.

21 MS. ISAACS: There's been multiple emails going
22 back and forth. I am having a great deal of difficulty with
23 the Clerk's office in getting the Zoom links and getting
24 onto Zoom. As for anything to be added at this time, I
25 stand with the Trustees and all of the states that are in

1 disagreement with what's going on with the appeal. And
2 that's all I have.

3 THE COURT: Okay. Thank you. All right. So I'll
4 hear briefly from the objectants and, again, I read the
5 objections and all the other pleadings. I would like to
6 focus again primarily, I think at this point, on the shorter
7 term stay, the alternative request by the movants for a stay
8 through the ruling by the District Court of some or all of
9 the confirmation order, or perhaps just the effective date.

10 I also note that I have a number of declarations,
11 which we've already discussed during the discussion of
12 Connecticut and Washington's motion. I don't know if you
13 want to -- I mean, different people have put up these
14 different witnesses, but I don't know if you want to deal
15 with those first or you have a time when you want to
16 introduce those declarations. I leave that up to the
17 objectors also.

18 MR. KAMINETZKY: Thank you, Your Honor. Again,
19 Mr. Kaminetzky, of Davis Polk, for the Debtors. So I guess
20 I could move for the admission of Mr. DelConte's
21 declaration, just to get that over with at this point. I
22 could address --

23 THE COURT: Okay.

24 MR. KAMINETZKY: It sounds like the Court has
25 already ruled on, I guess it was the motion to exclude that

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1 testimony. I'm happy to respond to the points you've made -

2 -

3 THE COURT: No, I --

4 MR. KAMINETZKY: -- but it's sounds like we've
5 done that already.

6 THE COURT: I did. I ruled on that. So is Mr.
7 DelConte available?

8 MR. KAMINETZKY: Yes, Your Honor. He's here.

9 THE COURT: Okay. Can you put him on the screen?

10 MR. KAMINETZKY: Yes. I'm told any second now.

11 THE COURT: Okay.

12 MR. KAMINETZKY: You know, he was in his -- I'm
13 sorry.

14 THE COURT: Okay. Can you hear me, Mr. DelConte?

15 MR. DELCONTE: I can. Can you hear me?

16 THE COURT: Yes, I can. Thank you. And see you
17 as well.

18 MR. DELCONTE: Can you hear me?

19 THE COURT: Yes.

20 MR. DELCONTE: Okay.

21 THE COURT: And I can see you too. So, Mr.
22 DelConte, you submitted a declaration intended to be your
23 direct testimony in connection with the objection to the
24 stay motions. It's dated October 22, 2021. Would you raise
25 your right hand, please? Do you swear to tell the truth,

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1 the whole truth, and nothing but the truth, so help you God?

2 MR. DELCONTE: I do.

3 THE COURT: Okay. And it's D-E-L-C-O-N-T-E, J-E-
4 S-S-E?

5 MR. DELCONTE: That's correct.

6 THE COURT: Okay. So, Mr. DelConte, as I said,
7 you submitted a declaration in connection with these matters
8 on October 22, 2021. Sitting here today, November 9th,
9 knowing that it would be your direct testimony, is there
10 anything in it that you wish to change?

11 MR. DELCONTE: No, sir.

12 THE COURT: Okay. Does anyone want to cross-
13 examine Mr. DelConte on his declaration? And again, I've
14 limited that declaration to the extent that I ruled so in
15 the colloquy with Mr. Goldman. Okay. Mr. DelConte, I had a
16 question for you. Do you have your declaration there?

17 MR. DELCONTE: I do.

18 THE COURT: Okay. In your declaration, you
19 discuss the timing of payments under the plan and describe
20 them in Paragraphs 7 through 9 and 12 through 21, and also
21 payments to fund the NewCo under the plan in Paragraph 22.
22 And then in Paragraph 26, 27 and 28, you do that present
23 value calculation based on your assessment of the delay in
24 distributions that would result from a stay of three months
25 through 6, 9, 12, 18 and 24 months. Do you see that there?

1 MR. DELCONTE: Yes, I do.

2 THE COURT: Okay. My question is, assume for the
3 moment a stay through the date of a ruling by the District
4 Court of the effective date of the plan, and then tack on 14
5 days to that. So assume that would be sometime, let's just
6 say, in the third or fourth week of December. Obviously,
7 I'm making a prediction on how the District Court might
8 rule. The court might rule later than that; might rule
9 earlier than that. When you say three months, what are you
10 tracking off of as the effective date?

11 MR. DELCONTE: I'm tracking off of the end of the
12 year, which a good proxy for when, you know, I think the
13 earliest that we could potentially emerge would be. So a
14 three-month delay in this case would be delaying emergence
15 from December 31st to the end of March.

16 THE COURT: Okay. And --

17 MR. DELCONTE: 2022.

18 THE COURT: I got it. And the distributions that
19 would be -- that you track as coming in on the effective
20 date for that period, are any of those distributions to the
21 end-users of the money, or are those distributions to the
22 trust and to NewCo?

23 MR. DELCONTE: Yeah, those distributions that
24 we're tracking, and these are the distributions to -- both
25 the Federal government and the creditors are in public

1 trusts. Those are just the timing of those payments --

2 THE COURT: So there would be a distribution to
3 the Federal government --

4 MR. DELCONTE: -- to those trusts, not -- we
5 haven't taken into account any -- yeah, I mean, there's the
6 \$225 million payment to DOJ and there's a \$25 million
7 payment to other Federal entities, in addition to the
8 trusts; \$600-some-odd million would be distributed to the
9 creditor of the public trusts. And we're tracking the
10 payments to those trusts. We haven't done anything to take
11 into account payments from those trusts ultimately to the
12 end-users.

13 THE COURT: Okay. All right. Then is there some
14 amount that would also go to fund NewCo, or is that just
15 there already, in essence?

16 MR. DELCONTE: Yeah, I mean, that money is
17 currently sitting at OldCo or PPLP, and at emergence, \$200
18 million of that would go to NewCo. As far as the harms that
19 we've looked at here, we've only been looking at harm as it
20 relates to the distributions that would ultimately go to
21 either the Federal government or the various trusts. We
22 haven't taken into account anything that the (sound drops)
23 distributed to NewCo.

24 THE COURT: Okay. All right. Those are my only
25 questions. Thank you. I don't know if you have any

1 redirect on that, Mr. Kaminetzky? No?

2 MR. KAMINETZKY: I do not, Your Honor. Sorry.

3 THE COURT: Okay. Your testimony is complete, Mr.
4 DelConte. You can go off screen now.

5 MR. DELCONTE: Okay. Thank you very much.

6 (Declaration of Jesse DelConte Admitted Into
7 Evidence)

8 MR. KAMINETZKY: Okay, Your Honor. Shall I
9 proceed?

10 THE COURT: Yes.

11 MR. KAMINETZKY: Okay. Again, Benjamin
12 Kaminetzky, of Davis Polk, for the Debtors. So, Your Honor,
13 I'm going to take your guidance, of course, and at first
14 I'll focus on what we'll call the short-term period between,
15 let's call it, now and the District Court's ruling.

16 And Your Honor, what we've done is we've provided
17 and have been willing to provide complete protection to the
18 movants against all risk of equitable mootness in the near
19 term, which would allow for Judge McMahon to decide the
20 pending appeals on the merits and would have eliminated the
21 need for today's hearing, but we're already here. And all
22 that we ask for is an escape hatch for the movants to
23 renotice the motion in a proper forum if there's any risk
24 that mootness were to arise in the future in a situation
25 that we quite frankly don't expect to happen.

1 And this is exactly what Your Honor suggested we
2 do, which was to try to "hit the sweet spot," based on a
3 reasonable prediction of when the District Court might rule.
4 So let's be crystal clear on where we are right now and what
5 it is that the movants have refused to accept.

6 The Debtors and the other plan proponents have now
7 made the following six unilateral concessions in writing,
8 signed, which provides everything the movants can get out of
9 this hearing. Now, Your Honor noted that the movants need
10 to show harm, not just conjecture -- I wrote those words
11 down -- but we have eliminated even conjecture. What do I
12 mean by that?

13 Every single party that intends to present
14 arguments or evidence to the District Court on appeal. That
15 includes the Debtors, the UCC, the AHC, the MSGE, the NAS
16 group. Both sides of the Sackler Family have stipulated in
17 writing to you, to the District Court, that they will never
18 argue before any court that the appeals of the confirmation
19 orders have been rendered equitably moot by the actions
20 taken in advance of the effective date in furtherance of the
21 plan, pursuant to both the confirmation order and the
22 advance order. Okay?

23 This agreement is set forth in stipulation and was
24 filed on October 20th on the District Court's docket. The
25 Debtors have agreed that the effective date will not occur

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1 until the earlier of seven days following a decision by the
2 District Court on the appeals and December 30th. In
3 addition, Sir, the Debtors have the --

4 THE COURT: Can I --

5 MR. KAMINETZKY: Sorry.

6 THE COURT: Can I just stop you there? So, on the
7 stipulation, the movants have said that you've carved out
8 arguing equitable mootness with respect to the sentencing
9 and its effects.

10 MR. KAMINETZKY: Yes. And that's -- we test in
11 the next point, Your Honor.

12 THE COURT: Okay.

13 MR. KAMINETZKY: We have agreed that we will not
14 request that the criminal sentencing take place before
15 December 20th. Now, under the plan, as Your Honor knows,
16 the sentencing hearing could otherwise occur as of December
17 1st. But let's just pause for a second on that, just so
18 it's clear.

19 The plea and sentencing is pursuant to a separate
20 agreement with the DOJ, not the plan and confirmation.
21 There was some confusion about that, but that's not
22 something that's addressed under the plan. That's something
23 we agreed to to the DOJ. But lest you think we're hiding
24 anything, we've also agreed that we'll file a notice on the
25 docket -- and obviously, it will be on the New Jersey

1 court's docket -- when the criminal sentencing hearing is
2 scheduled.

3 And lest you think we're hiding anything and not
4 being transparent, the sentencing hearing has not been
5 scheduled, and suffice it to say that scheduling a
6 sentencing hearing in a U.S. District Court can take several
7 weeks. And we haven't asked -- we haven't reached out yet
8 to schedule that sentencing hearing.

9 So isn't something that could happen in the dead
10 of night without any notice. This is a sentencing hearing
11 in a very public case. There'll be plenty of notice. And
12 we've agreed already in writing that the earliest it
13 possibly could occur is December 20th. But again, that date
14 -- we haven't even reached out to obtain a sentencing date.
15 And when I say we, I mean we and/or the DOJ.

16 THE COURT: Well --

17 MR. KAMINETZKY: Okay. So that's number --

18 THE COURT: Okay. Why don't --

19 MR. KAMINETZKY: -- four. The --

20 THE COURT: Why don't you go through all the
21 points, and I'll come back to questions I have.

22 MR. KAMINETZKY: Okay, good. Number four, the
23 Debtors will provide no less than 14-days' notice of the
24 actual effective date. And that was something Judge McMahon
25 asked us to do, and we obviously have agreed to do it. I

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1 already talked about that we'll file on the docket when the
2 criminal sentencing has been scheduled.

3 And finally, the plan opponents agree that the
4 movants may renew their stay motions or file a new motion as
5 of the earlier of the District Court's decision on appeal
6 and December 15th.

7 So these concessions provide the movants complete
8 protection from the risk of equitable mootness until
9 December 20th at the earliest and would either allow the
10 District Court to decide the appeals on the merits, or if
11 contrary to everyone's expectation, Judge McMahon's ruling
12 is delayed, tee up the stay motions at a later point in
13 time, before any risk of mootness becomes imminent.

14 We've built everything in so that the two things
15 that could possibly render -- you know, arguably render
16 anything equitably moot, we've built into the stipulation
17 that we've provided, protection that they could come back to
18 court and make any -- renew this motion.

19 So there's literally -- I mean, the only harm that
20 they could articulate --

21 THE COURT: Well --

22 MR. KAMINETZKY: -- in the short-term stay or in
23 the short-term period is the equitable mootness, and we have
24 taken it off the table.

25 THE COURT: So could I explore that for a minute

1 or two?

2 MR. KAMINETZKY: Please.

3 THE COURT: I expect you heard me initially having
4 some doubt as to how the sentencing, when it occurs,
5 arguably give rise to equitable mootness. And I was told
6 one thing, and perhaps two. First I was told that if the
7 sentencing occurs, there will be tremendous pressure to go
8 effective at that point, because the Debtors, as opposed to
9 NewCo, which only exists under the plan if the plan goes
10 effective, would not be able to continue on in their
11 business. What is your response to that?

12 MR. KAMINETZKY: That might very well be the case.

13 THE COURT: Okay.

14 MR. KAMINETZKY: That the -- again, it's not
15 necessarily two seconds later, but there's certainly a risk
16 of that.

17 THE COURT: Well, how --

18 MR. KAMINETZKY: And that is why we're not --

19 THE COURT: How soon afterwards does that happen?

20 MR. KAMINETZKY: Well, I'm not sure. I don't
21 think it's necessarily up to us.

22 THE COURT: Okay.

23 MR. KAMINETZKY: I'm not the expert in this area.
24 But I'm not here to argue that the sentencing isn't a very
25 big deal. I'm here saying that there's no risk that that

1 could happen under the stipulation that we've provided, or
2 are willing to provide, or have provided to the other side
3 without giving them an opportunity to come back and get a
4 stay, if necessary.

5 Obviously, if we're in that position and Judge
6 McMahon hasn't ruled yet, we'll take that into account and
7 most likely extend that date. We're not --

8 THE COURT: Well --

9 MR. KAMINETZKY: -- here trying --

10 THE COURT: I'm sorry. What is the harm to the
11 Debtors and the other Appellees of delaying the sentencing,
12 or having the Debtors request a sentencing hearing date that
13 would be, say, at the end of December? Is there some
14 difference between December 20 and December 31, or...?

15 MR. KAMINETZKY: No, there's no -- if you want
16 another 10 -- put it to December 31, we're happy to do this.
17 The issue here, Your Honor, is we all are expecting -- and
18 if you were at Judge McMahon's hearing, we heard it -- she
19 put this -- what she called a "rocket docket." We all
20 expect her to rule promptly.

21 The only risk we are protecting -- you know, why
22 can't I just get up and say we'll give them -- you know,
23 we'll stipulate until Judge McMahon's ruling. In all likely
24 circumstances, that's what we're doing. We just feel as
25 fiduciaries, you know, who knows what could happen. So we

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1 want some outside date that if Judge McMahon, for whatever
2 reason, doesn't rule by then, we could come back to you or,
3 you know, we could see where we are.

4 We just can't right now say, you know, we'll wait
5 until Judge McMahon's ruling. Although, you know, that's
6 where we all expect to be. Judge McMahon, again, she's
7 scheduled oral arguments November 30th. Right after doing
8 that, she said, "And I have a criminal trial starting on
9 December 7th." The implication of that, I thought, was that
10 she's going to try to rule very promptly. And that's why
11 we've set the dates the way they are, December 20th,
12 December 30th.

13 But, you know, those are all -- and that's why we
14 just want the back-up drop-dead date. But again, we all
15 expect -- and the purpose of the stipulation is to give them
16 comfort that nothing will happen until Judge McMahon rules,
17 both the effective date and the sentencing.

18 THE COURT: So, can we --

19 MR. KAMINETZKY: And once we've -- Your Honor,
20 this is -- I'm sorry.

21 THE COURT: The proposal is, as you've repeated
22 just now, that the agreement is that the effective date
23 would not occur until the earlier of the District Court's
24 ruling or December 30, which places the onus on the movants
25 to seek a ruling within the 14-day notice period that you've

1 agreed to, assuming that a ruling isn't forthcoming by
2 December 30, right? That's really what you --

3 MR. KAMINETZKY: Right, that's --

4 THE COURT: That's what you're suggesting.

5 MR. KAMINETZKY: Yes, because -- and again, the
6 burden is on -- let's just -- I'm not asking for a favor,
7 Your Honor.

8 THE COURT: Right.

9 MR. KAMINETZKY: The burden is on them. Like, a
10 stay isn't the natural state of being. A stay is
11 extraordinary, and they have a burden. Their only burden,
12 the only harm that they could talk about -- and again, we're
13 limiting this to the interim period as equitable mootness.
14 We have taken it off the table until, you know, Judge
15 McMahon rules, for all intents and purposes. We think we're
16 done, then.

17 And again, if there's an issue or, the only thing
18 that we've added is a -- you know, let's say something
19 happens and Judge McMahon doesn't rule, yes, the burden
20 would be on them. But that's fair because we don't expect
21 that to happen and they can't -- sitting here today, they
22 can't meet their burden.

23 First of all, equitable mootness alone shouldn't
24 count. But even assuming it does, and even -- and we heard
25 Your Honor loud and clear, that Your Honor wants meaningful

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1 appellate review. So do I. We've given them meaningful
2 appellate review until Judge McMahon rules.

3 And at that point in time, Your Honor -- and I
4 could go through the case law; Your Honor already did it --
5 basically, that's all you could give them at this hearing,
6 because under the vast majority of rule, with the exception
7 of a single case that the U.S. Trustee found, is that Your
8 Honor's kind of jurisdiction, or Your Honor's ability to
9 impose a stay, or Your Honor's stay dissolves after the
10 District Court rules.

11 So we're giving them, with one exception, until
12 Judge McMahon rules. With the safety valve that the Debtors
13 need and as plan fiduciary needs, is if something goes
14 sideways and for some reason Judge McMahon hasn't ruled, we
15 could come back to you at that time.

16 THE COURT: Are there other actions...? Let's say
17 I just stayed the effective date and not the plan itself --
18 I mean, the confirmation order itself; I stayed one of the
19 conditions to the effective date, which would -- until the
20 District Court ruled or December 30, whatever was earlier --
21 are there steps that would involve either -- let me just
22 turn to the applicable section -- the transfer of material
23 assets under the plan or distributions to creditors before
24 then --

25 MR. KAMINETZKY: No, no, no.

1 THE COURT: -- i.e. substantial consummation?

2 MR. KAMINETZKY: No, no and no. What we're doing
3 now, as we've always said, we're setting up trusts, paying
4 professionals, seeking regulatory approvals. There's no
5 transfer of assets until the effective date. We're setting
6 up for that effective date when the transfers actually
7 occur. That's why it was giving ice in winter to say that -
8 - you know, for us to make clear and stipulate again and
9 again and again that we won't make any equitable mootness
10 argument with respect to any actions pursuant to advance
11 this order pertaining to the confirmation order, you know,
12 with a sentencing that we talked about otherwise.

13 THE COURT: And --

14 MR. KAMINETZKY: So the answer is --

15 THE COURT: And that's all part of you and the
16 Other Appellees' stipulation, that those sorts of things --

17 MR. KAMINETZKY: Stipulated to it --

18 THE COURT: Would not --

19 MR. KAMINETZKY: -- filed it on the docket.

20 THE COURT: You would not argue equitable mootness
21 based on those sorts of things?

22 MR. KAMINETZKY: Absolutely. That's black and
23 white. We've said it. It's filed upon the docket in the
24 District Court, and we sent a signed version of it to the
25 other side as well and to Your Honor.

1 Again, Your Honor, it may be a -- for us, it's an
2 important point. If we remove the equitable mootness risk,
3 which is the only risk or the only harm that they've
4 identified, they are not entitled even to the short-term
5 stay, period. And we've done that.

6 And we've taken into account anything that they've
7 identified, including, obviously, the effective date and the
8 sentencing, by giving them comfort that we won't seek
9 sentencing before December 20th. If you want us to move
10 that to December 31st, we're happy to do that as well.

11 But again, we don't control the sentencing. The
12 District Court does. All we can say is we won't seek to
13 schedule it until then. But again, all that we're looking
14 for is some sort of safety valve that we think won't be
15 necessary, because we think Judge McMahon is -- she's
16 indicated that she realizes how exigent this is.

17 THE COURT: So I just want to make sure.
18 Originally, I think you said that you would request that the
19 current sentencing will not take place before December 8,
20 but then you said December 20.

21 MR. KAMINETZKY: No, it's December -- we've agreed
22 not to... I'm sorry. We've agreed not to seek to have the
23 sentencing hearing occur before December 20th. That's in
24 the current stipulation that we had sent over.

25 THE COURT: Okay. And --

1 MR. KAMINETZKY: December 8th was the earliest.

2 Just the dates are a little -- December 1st was the --

3 THE COURT: That was the earliest that it could
4 happen.

5 MR. KAMINETZKY: It could happen. Exactly. As
6 opposed to -- but this in a further agreement. But we're
7 happy to -- there's nothing written in stone about December
8 (indiscernible). But all we're trying to do is give Judge
9 McMahon time that she needs to rule without any risk of
10 equitable mootness between now and then. And once we've
11 done that, they have what they need, all the harm that
12 they've identified has been dealt with, and we should be
13 done. It's really as simple as that.

14 THE COURT: Okay. Well, why don't I hear from
15 counsel for the U.S. Trustee on this point.

16 MR. KAMINETZKY: Okay. All right. I'll be back.

17 MS. LEVINE: Your Honor, my video takes just a
18 second.

19 THE COURT: No, that's fine, Ms. Levine.

20 MS. LEVINE: I'll go ahead and start. I don't
21 know what's going on with my video. It'll come up soon.

22 But, Your Honor, I think what I've heard is that
23 there is an agreement that there should not be equitable
24 mootness, at least before the District Court rules. And
25 where there is a difference of opinion is what would cause

1 that to happen. And you know, with respect to the
2 stipulation that they've sent, it's really unclear to us.
3 You know, that was an offer that they had sent, which we did
4 not agree to for various reasons, including that it
5 purported to limit our ability to seek stay relief.

6 And we're, again -- you the concern here is
7 sentencing, which as you've heard, they do intend to argue
8 sentencing will constitute equitable mootness, and we don't
9 know what -- they've offered to have that, I guess, as early
10 -- no earlier than December 20th. That's part of the
11 stipulation, but it's attached to conditions that would
12 limit when we could seek further state relief. That would
13 prevent us from going back to court until December 15th,
14 just five days before then.

15 THE COURT: Well, let's say it's December 30th
16 instead, so you have a full 14 days.

17 MS. LEVINE: Your Honor, we were willing to
18 discuss a stipulation in the context of trying to get to a
19 consensual resolution --

20 THE COURT: No, no. I'm just --

21 MS. LEVINE: -- and we weren't --

22 THE COURT: -- focusing on the merits. I'm trying
23 to figure out what's the harm in that, in what has just been
24 proposed with the change that the sentencing also would
25 occur no earlier than December 30. So you pretty much know

1 that the 14 days to renew the stay motion would be in mid-
2 December, if there hasn't been a ruling by them. And you'd
3 tea that up before the 30th.

4 MS. LEVINE: Your Honor, our concern is twofold.
5 You know, one is making sure that we get a ruling before
6 that day comes, with plenty of time to seek a further stay.
7 You know, I know you disagree about this, but we do have
8 concerns about the other activities that are going on. And
9 the only way to ensure that someone doesn't come in and say
10 those other activities don't cause equitable mootness is a
11 stay. And the only sure way to ensure that they're not
12 going to request a sentencing date that then ends up falling
13 before a ruling by the District Court is a stay of the
14 confirmation order. That's the only sure way we know of.

15 THE COURT: I don't understand -- I guess --

16 MS. LEVINE: And the --

17 THE COURT: You're saying because there's an
18 outside date for the effective date, which would be December
19 30 in the proposal, right?

20 MS. LEVINE: Well, it's the sentencing, Your
21 Honor, that they say that they're going to --

22 THE COURT: Well, both dates. But December 30
23 could be a date before the District Court rules.

24 MS. LEVINE: It could be, yes. And that would
25 undermine sort of the whole project, which is to make sure

1 we're getting a ruling before there is --

2 THE COURT: But the U.S. Trustee was making
3 emergency motions for a stay while I was still on the bench
4 ruling on the plan. The U.S. Trustee is perfectly capable
5 of making this motion. In fact, it's already done so, and
6 we've already had a hearing on it. So it wouldn't seem to
7 me that hard when you have 14-days' notice to do it.

8 MS. LEVINE: We certainly could go back to the
9 Court if we have to go back to the Court, Your Honor. We
10 don't see the harm in entering the stay now, though, to
11 prevent that additional motion practice, which will cost
12 everyone resources, you know, particularly if the stay is
13 less than what we are asking for, but is just through the
14 date of the District Court decision.

15 THE COURT: That's all you're going to get.

16 MS. LEVINE: You know, that --

17 THE COURT: You're not going to get any more than
18 that, Ms. Levine. So I don't think you should worry about
19 giving up anything on this point.

20 MS. LEVINE: I got that impression, Your Honor.

21 THE COURT: Okay.

22 MS. LEVINE: So, you know, what we're talking
23 about balancing is, you know, that short amount of time,
24 that short amount of delay, to ensure that the District
25 Court is able to rule on the merits, which I think --

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1 THE COURT: All right. So let me just ask Mr. --

2 MS. LEVINE: -- everybody agrees on this is
3 something that should happen.

4 THE COURT: -- Mr. Kaminetzky. Your concern is
5 really just if something happens that is unexpected, that
6 delays Judge McMahon from ruling, right? I mean, that's
7 really why you've put this earlier of District Court ruling
8 or December 30, right?

9 MR. KAMINETZKY: Exactly. We did --

10 THE COURT: So --

11 MR. KAMINETZKY: -- I mean, again --

12 THE COURT: I mean, if that happens -- I mean, I
13 don't what it would be. Maybe, you know... I don't know
14 what happens. But I think what Ms. Levine is saying is why
15 can't the Debtors come back to me and say it's a port for us
16 to have the effective date go forward now?

17 MR. KAMINETZKY: The answer is, Your Honor, just
18 that's not what the law is. The law --

19 THE COURT: Because it --

20 MR. KAMINETZKY: -- isn't that --

21 THE COURT: It would shift the burden. You're
22 saying it would shift the burden.

23 MR. KAMINETZKY: It shifts the burden. Yeah, the
24 burden is on them to show -- and I'm now quoting from the
25 Calpine case, how it has to be neither remote nor

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1 speculative, but actual and imminent. There is no harm.

2 THE COURT: Okay.

3 MR. KAMINETZKY: The only harm they've articulated
4 is equitable mootness, and we've taken that off the table.
5 They are not entitled to a stay. We've written it in blood
6 seven or eight times that we've eliminated any risk to them.
7 And if the unexpected happens, I'm fine with -- you know,
8 December 15th they could file their new motion. We'll wait
9 until December -- the earliest sentencing date is December
10 31st, which means that the effective date -- the earliest
11 one has to be seven days later. They have all the time in
12 the world if the risk becomes actual and imminent. But it
13 isn't, because we've agreed to take that off the table.

14 THE COURT: So when -- I'm just trying to figure
15 out how the 14-days' notice of the effective date would tie
16 into a December 30 sentencing date and a December 30 end
17 date to the voluntary stay. When would you give that
18 notice?

19 I guess you'd get -- can I interrupt you? I guess
20 what you would do -- correct me if I'm wrong -- is you would
21 fairly soon, I suppose, reach out to the District Court in
22 New Jersey and say, can you give us a sentencing hearing
23 sometime between December 30 and the next available date
24 thereafter. Right? So you know when that would be? And
25 then you would -- then you would --

1 MR. KAMINETZKY: Yes, Your Honor. We can't --

2 THE COURT: And then you would say in your --

3 MR. KAMINETZKY: We can't go --

4 THE COURT: Then you would say in your notice,
5 we're giving you more than 14-days' notice. We're giving
6 you a notice that we plan to go effective whatever date is
7 after that sentencing hearing that you have to go effective?
8 Or would it be the date of the sentencing hearing?

9 MR. KAMINETZKY: Well, it's both, Your Honor. We
10 would give them notice of the sentencing hearing when it's
11 scheduled. And obviously, it hasn't been scheduled yet.
12 So, you know -- and Your Honor knows how busy District
13 Courts are. So we'd give them immediate notice of that.
14 They'll then know for sure that we can't go effective until
15 after that date. The earliest is seven days after that date
16 under the plan. And then they have plenty of notice of both
17 the sentencing hearing, which won't happen overnight, as
18 well as the effective date that will happen there after.

19 THE COURT: So is the sentencing hearing date,
20 though, the key date, because the puzzle really does
21 arguably change -- that's the missing piece of the puzzle as
22 far as mootness is concerned? So really, the notice of the
23 effective date is less important than the noticing of the
24 sentence date?

25 MR. KAMINETZKY: Correct. And I mean, perhaps,

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1 yes, maybe perhaps, but the answer is they're going to have
2 plenty of notice of the sentencing date. And there's a
3 reason we're not playing games, Your Honor. We're not ready
4 to be sentenced yet. We still have work to do that's --

5 THE COURT: Right. Well, so --

6 MR. KAMINETZKY: -- you know, to get ready for
7 this --

8 THE COURT: So I could require that you provide
9 not only 14-days' notice of the actual effective date, but
10 also 14-days' notice of the sentencing date.

11 MR. KAMINETZKY: I have no problem with that. I
12 mean, again, it's in the District Court's discretion. But
13 like --

14 THE COURT: No, I mean -- but I --

15 MR. KAMINETZKY: -- no problem here.

16 THE COURT: I'm assuming the District Court will
17 give you at least 14-days' notice, right?

18 MR. KAMINETZKY: I certainly expect that to be the
19 case. I think it would be quite -- in a public case like
20 this, for a company like Purdue to be sentenced, I assume
21 the District Court will give plenty of notice to everyone,
22 including the public. So there's nothing happening here in
23 secret. This isn't the type of, you know, equitable
24 mootness that you're scared that wires will be sent out in
25 the middle of the night. This is the most public events

1 that you could imagine is the sentencing of Purdue Pharma in
2 a United States District Court.

3 And again, Your Honor, we're happy to -- I can
4 repeat this -- we're all thinking -- you know, we all think
5 that Judge McMahon, when she indicated in reading between
6 the lines that she's going to rule quickly, so setting
7 December 30th and January 7th is really not a problem. We
8 just feel we need the protection of some outside date, just
9 in case who knows what.

10 THE COURT: Okay. All right.

11 MR. KAMINETZKY: And Your Honor, Ms. Levine came
12 back to these, you know, mysterious other things that are
13 happening. But we've already dealt with those mysterious
14 other things that are happening. How many times does Your
15 Honor have to rule that there's just simply no equitable
16 mootness possibility there? And again, we've stipulated it,
17 and every plan proponent has stipulated that we will never,
18 ever, ever make the argument that that would be to equitable
19 mootness, any of those activities.

20 THE COURT: Okay. All right. Does any other
21 movant have anything to say on these points? Any other stay
22 movant?

23 MR. GOLD: Your Honor, Matthew Gold. Can you hear
24 me?

25 THE COURT: Yes.

1 MR. GOLD: Just a couple of brief observations,
2 Your Honor. The first is it seems to me, given the
3 construct of the Debtors' (indiscernible) that there would
4 be no additional burden on the Debtor, and it would make
5 perfect sense for them to provide us with substantially
6 immediate notice a time when a request is made of the
7 District Court for sentencing to occur, rather than saying
8 send a date and -- I mean, if they're making a request to
9 the District Court, they should be able to tell everyone
10 that they have done so right then and there, or
11 substantially (sound drops) thereafter, regardless of when
12 that occurs.

13 The second thing is that I still find in the
14 Debtors' proposal a subtle rewriting of Rule 8025, which
15 Your Honor discussed earlier, which provides for a two-week
16 stay following the ruling of the District Court, rather than
17 --

18 THE COURT: That still applies. That still
19 applies. This is just -- this just takes you up to the
20 District Court ruling.

21 MR. GOLD: I understand. I just... It just
22 seems, to us, cleanest when not creating confusion to say
23 that whatever Your Honor grants would be coterminous with
24 the stay that comes from under Rule 8025, rather than having
25 to have anyone puzzle out what happens if one stay applies -

1 - ends earlier, and another stay does not.

2 THE COURT: Well, to me, the way to do that is to
3 say it's... First of all, the Debtors are not proposing a
4 stay here. They're proposing a stipulation that would
5 obviate the need for a stay. And that at that point, you
6 know, you have the District Court ruling. And then 8025
7 comes into play.

8 MR. GOLD: Okay. Well, the Debtors' stipulation
9 did not contain anything that said that it was not -- it was
10 possible we were concerned in reading it that it might be
11 intended to be a derogation of whatever rights --

12 THE COURT: No.

13 MR. GOLD: -- under 8025 --

14 THE COURT: I understand, but I don't --

15 MR. GOLD: -- and not --

16 THE COURT: Well, no one even mentioned 8025, but
17 I understand that point. But I think that that would be
18 clear from my ruling here.

19 MR. GOLD: Okay. And Your Honor, I mean, the only
20 other thing which I will suggest is it's hard for me to
21 believe that anyone wants to be deliberately setting a
22 deadline that runs to New Years Eve, or immediately, giving
23 a few days after that, if parties are going to be having to
24 run in for emergency applications would make a certain
25 amount of sense, given that the Debtors have conceded that a

1 few days here or there is not going to make a meaningful
2 difference in this context.

3 Other than that, I have nothing to add on this
4 point, Your Honor.

5 THE COURT: Okay.

6 MR. GOLDMAN: Your Honor, may I just add one
7 additional point? Irv Goldman, Pullman & Comley, for the
8 State of Connecticut.

9 THE COURT: Sure.

10 MR. GOLDMAN: I think Your Honor hit directly on
11 the head that the important date here, especially if the
12 District Court has ruled by December 30, is the criminal
13 sentencing date. Although they've agreed to postpone asking
14 for that to be held to December 30 or December 31, if it
15 does actually fall on that date, I think it does make it --
16 and this follows up on Mr. Gold's point -- somewhat of a
17 difficulty in trying to get an emergency stay motion over
18 the holiday season, running up to December 30th. So I think
19 it does, for that reason, make (sound drops) sense to have
20 that pushed out so we're not running into the holidays.

21 THE COURT: Well, I'm assuming you would make it -
22 - you would file it and get a date a couple weeks before
23 then. But I understand the hearing time. Understand that
24 point, I don't think any court is particularly excited to
25 have a hearing, although I think it would probably be

1 shorter than this one, on the New Year's Eve.

2 MR. GOLDMAN: Yes. That's all I had, Your Honor.

3 THE COURT: Okay. All right. Okay, so, look, I
4 think obviously there is a lot more that the objectors want
5 to get in the record for this hearing. But I do think that
6 the Debtors' proposal, with some tweaking, really does make
7 a lot of sense in the interim, particularly given Mr.
8 DelConte's testimony that the money itself wouldn't be
9 flowing even to the trusts until the beginning of 2022, and
10 wouldn't thereafter, at least for a while, be going out --
11 at least for a couple of weeks -- be going out to third
12 parties in the form of the abatement payments. And probably
13 a little bit longer for the personal injury claimants, which
14 is the offsetting harm that the objectors have highlighted,
15 and rightfully so.

16 So, why don't I throw out -- and people can be
17 thinking about this while I hear the rest of the argument --
18 that the Court's ruling would be to deny the stay request,
19 on the conditions that the effective date not occur until
20 the earlier of the issuance of the District Court's ruling
21 and January 7th. That the Debtors will not seek a
22 sentencing hearing to occur any earlier than January 7th,
23 and that they will provide notice, not only of when that
24 hearing is scheduled, but also their request for one to the
25 Appellants. And that the movants may renew their stay

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1 motion on at least 14-days' notice. And of course, that
2 would also be accompanied by the stipulation that's been
3 signed that the Appellees will not argue that any of the
4 other actions that would be taken leading up to either the
5 District Court ruling or January 7 would serve as a basis
6 for equitable mootness.

7 So you all can mull that over, but I don't know if
8 you want to go into additional argument, Mr. Kaminetzky, or
9 does that conclude your argument? In which case, I'll hear
10 from the other objectants. I think you're on mute still.

11 MR. KAMINETZKY: I am on mute. I have a double
12 mute because I don't trust just one mute. But here's --
13 well, Your Honor, we have -- if Your Honor wants me to
14 address the longer stay, if that's still on the table, then
15 I have a lot to say about that in terms of irreparable harm
16 and the other prongs. If not, then I'll save that for,
17 hopefully, never. But it's really up to you.

18 We do have a -- you know, we have a lot to say on
19 the three-hour argument that the other side had on
20 irreparable harm and the balances of harms and public policy
21 and bond and all of that. So, Your Honor, I don't want to
22 do something that you're not -- you don't want us to do, but
23 we're happy to make that record or not make that record.

24 THE COURT: Well, unfortunately, where I know
25 where I'm coming out, at least some of the movants, not all

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1 of them, really are, I think, still actively pursuing as an
2 alternative the stay through the conclusion of the appellate
3 process. So I think we should, albeit maybe so as to
4 preserve the record, at least get in the witness
5 declarations and hear brief argument on the irreparable harm
6 and balance of the harms and public policy points for, or
7 with respect to, movants' request for a stay beyond the
8 dates that I have posited, which again would be the earlier
9 to occur of the District Court's ruling and January 7th,
10 although that wouldn't be a stay. That would be a denial of
11 the motion on the conditions that these agreements be made
12 by the Appellees.

13 MR. WAGNER: Your Honor, Jonathan Wagner, from
14 Kramer Levin, on the issue of the declarants -- on behalf of
15 the Ad Hoc Committee. Our declarant, Mr. Guard, has to
16 leave by 4:00 --

17 THE COURT: Okay.

18 MR. WAGNER: -- to pick up his son.

19 THE COURT: Okay.

20 MR. WAGNER: So can we swear him in now and have
21 him attest to his declaration?

22 THE COURT: Yes, that's fine.

23 MR. WAGNER: That's fine.

24 THE COURT: And I see him there on the screen.

25 So, Mr. Guard, would you raise your right hand, please? Do

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1 you swear or affirm to tell the truth, the whole truth, and
2 nothing but the truth, so help you God?

3 MR. GUARD: I do.

4 THE COURT: Thank you. And it's John M. G-U-A-R-
5 D?

6 MR. GUARD: Yes, sir.

7 THE COURT: Okay. So, Mr. Guard, you submitted a
8 declaration intended to be your direct testimony on these
9 motions for stay pending appeal. It's dated October 22,
10 2021. Knowing again that it would be your direct testimony,
11 is there anything in it sitting here on November 9 that you
12 want to change?

13 MR. GUARD: No, Your Honor.

14 THE COURT: Okay. Does anyone want to cross-
15 examine Mr. Guard? Okay. I have reviewed Mr. Guard's
16 declaration. I believe it's quite clear. I have, in part,
17 limited it, as I ruled in my colloquy with Mr. Goldman, in
18 light of Connecticut and Washington's objection to its
19 admissibility. But otherwise, I'll admit it now. It's just
20 direct testimony. So, you can sign off, Mr. Guard.

21 MR. GUARD: Thank you, Your Honor.

22 THE COURT: Okay.

23 (Declaration of John M. Guard Admitted Into
24 Evidence)

25 THE COURT: I think other objectors also submitted

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1 declarations that they may want to move the admission of
2 now. Mr. Jorgensen and the Committee's two witnesses, Ms.
3 Juaire and Ms. Trainor.

4 MR. HURLEY: Your Honor, if I may, it's Mitch
5 Hurley, on behalf of the Official Committee of Unsecured
6 Creditors.

7 THE COURT: Okay.

8 MR. HURLEY: Your Honor, my colleague, Arik Preis,
9 is going to argue the objection to the stay motion on behalf
10 of the UCC. I'm taking the virtual podium here only to
11 offer into evidence the declarations of Ms. Juaire and Ms.
12 Trainor.

13 Both witnesses are members of the UCC, who have
14 dedicated countless uncompensated hours to these cases.
15 Both agreed during the course of the cases to cease their
16 ordinarily outspoken public advocacy relating to Purdue.
17 Both have suffered unthinkable personal loss as a result of
18 the opioid epidemic. And both have responded by devoting
19 virtually all of their time helping others (indiscernible)
20 community.

21 As such, the ICC submits these witnesses have
22 unique knowledge and insights in matters of great relevance
23 to the exercise the Court is undertaking on the stay motion,
24 and that those insights should be a part of the record.

25 The states of Washington and Connecticut were

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1 alone in objecting to admission of the declarations of Ms.
2 Juaire and Ms. Trainor, and then only with respect to
3 several discrete statements included in those declarations.

4 My understanding is that the Court already has
5 overruled the objections of Washington and Connecticut, as
6 explained in more detail by the Court earlier in these
7 proceedings today. And I therefore will not address further
8 those objections, unless Your Honor has questions for me.
9 And both of the witnesses are present and available to
10 affirm their declarations, if Your Honor wishes.

11 THE COURT: Just to be clear, I didn't completely
12 overrule the two states' objections. I granted them to the
13 extent that I found that each declarant was predicting or
14 offering a rationale for the exact effect of the delay of
15 payments under the plan and/or stating their belief as to
16 why certain sources of abatement have shut down over the
17 last several months.

18 I admit them for predictions by a reasonably
19 informed person who has dedicated, as you said,
20 substantially all of their time to these types of issues,
21 and who have in each case involved them to a significant
22 degree in understanding and interacting with others like
23 them, who have devoted themselves as well to abatement of
24 the opioid crisis.

25 So, why don't we start with Ms. Juaire? She can

1 go on the screen. Okay. Would you raise your right hand,
2 please? Do you swear or affirm to tell the truth, the whole
3 truth, and nothing but the truth, so help you God?

4 MS. JUAIRE: I do.

5 THE COURT: And it's Cheryl, C-H-E-R-Y-L, Juaire,
6 J-U-A-I-R-E?

7 MS. JUAIRE: Yes.

8 THE COURT: Okay. Ms. Juaire, you submitted a
9 declaration in connections with these motions for a stay
10 pending appeal that was intended to be your direct
11 testimony. It's dated October 21, 2021. Sitting here today
12 on November 9, is there anything in it that you would wish
13 to change?

14 MS. JUAIRE: No.

15 THE COURT: Okay. Does anyone want to cross-
16 examine Ms. Juaire? Okay.

17 I have read the declaration and I don't have any
18 questions on it. It's quite clear to me, and I will admit
19 it as Ms. Juaire's direct testimony subject to the
20 limitation on admission that I previously articulated.

21 So thank you, Ms. Juaire, and you can sign off at
22 this point.

23 MS. JUAIRE: Thank you.

24 THE COURT: Okay. And then can we bring Ms.
25 Trainor on the screen? Good afternoon. Would you raise

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1 your right hand, please? Do you swear or affirm to tell the
2 truth, the whole truth, and nothing but the truth, so help
3 you God?

4 MS. TRAINOR: I do.

5 THE COURT: Okay. And it's K-A-R-A T-R-A-I-N-O-R?

6 MS. TRAINOR: Yes.

7 THE COURT: And Ms. Trainor, you submitted a
8 declaration in connection with this set of motions for a
9 stay pending appeal. It's dated October 21, 2021, and it's
10 intended to be your direct testimony.

11 Sitting here today on November 9, is there
12 anything in it that you wish to change?

13 MS. TRAINOR: No.

14 THE COURT: Okay. Does anyone want to cross-
15 examine Ms. Trainor on her declaration? Okay.

16 And again, I've reviewed it and I found it to be
17 quite clear and subject to the limitation on admissibility
18 that I previously noted, I will admit it as Ms. Trainor's
19 direct testimony. I don't have any questions of her, so
20 thank you and you can sign off, ma'am.

21 MS. TRAINOR: Thank you.

22 THE COURT: Okay.

23 MAN 1: Thank you, Your Honor.

24 THE COURT: Okay. I think there were two other
25 declarations, one by Mr. Jorgensen and then one that came

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1 out very recently, which may or may not be necessary given
2 my ruling on the objections to admissibility by the State of
3 Connecticut and the State of Washington, but I think that's
4 Mr. Jorgensen. And a declaration by another official from
5 Arkansas, which I'm looking for and can't find at the moment
6 -- here it is, I have it -- Mr. Lane.

7 MR. LIESEMER: Yes, Your Honor. This is Jeffrey
8 Liesemer on behalf of the multi-state governmental entities
9 group. We had filed the declaration of Mr. Jorgensen, and
10 if we could proceed, I can see if we can bring him up.

11 THE COURT: Yes. If you could pull him on the
12 screen, that'd be fine.

13 MR. LIESEMER: And while we are waiting for Mr.
14 Jorgensen to appear, I just did want to remind Your Honor
15 that Washington and Connecticut had raised certain
16 evidentiary objections to the declaration of Mr. Jorgensen,
17 similar to the other declarants.

18 And we filed the declaration of Mr. Kirk Lane
19 yesterday to respond to the narrow point that was raised by
20 the two states, and Mr. Lane's declaration is at Docket
21 4075.

22 THE COURT: Okay, right. I have it here now.
23 Okay. I see Mr. Jorgensen now. Would you raise your right
24 hand, please? Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth, so help you God?

1 MR. JORGENSEN: I do.

2 THE COURT: And it's Colin, C-O-L-I-N, Jorgensen,
3 J-O-R-G-E-N-S-E-N?

4 MR. JORGENSEN: Yes, Your Honor.

5 THE COURT: Okay. So, Mr. Jorgensen, you
6 submitted in connection with the motions for stay pending
7 appeal. It's dated October 20, 2021. It's intended to be
8 your direct testimony in support of the multi-state
9 governmental entities group in opposition to those motions.

10 Knowing that and sitting here today on November
11 9th, is there anything in it that you would wish to change?

12 MR. JORGENSEN: One thing, Your Honor, an update.

13 THE COURT: Okay.

14 MR. JORGENSEN: In Paragraph 12 on Page 5-6 of my
15 affidavit, I cite the number 515 drug overdose deaths in
16 Arkansas for 2020.

17 THE COURT: Right.

18 MR. JORGENSEN: And since I wrote and signed the
19 declaration, I've learned that the updated final number is
20 547 overdose deaths in Arkansas in 2020.

21 THE COURT: Okay.

22 MR. JORGENSEN: I can source that for you if you
23 want.

24 THE COURT: I think you should do that for you,
25 yes.

1 MR. JORGENSEN: Okay. So I found that number on
2 the Arkansas Drug Director's website, which is
3 artakeback.org. There's a news button you can push. And
4 when you go into that, it's the most recent post on the
5 website is from October 28th, just less than two weeks ago,
6 and that article, the last sentence in that articles cites
7 the number 547 drug overdose deaths in Arkansas in 2020.

8 When I saw that, I knew that must mean they have
9 arrived at a final number, and I reached out to Kirk Lane,
10 who is the Arkansas Drug Director, and I asked him to source
11 that for me. And he sent me several reports from the
12 Arkansas Department of Health, which maintains these final
13 numbers and death certificates and things.

14 And I reviewed the reports and saw that they
15 consistently all cited the number 547 as the number for
16 overdose deaths in Arkansas in 2020.

17 THE COURT: Okay.

18 MR. JORGENSEN: It doesn't change much in
19 substance for my affidavit. It's just the more accurate
20 number now with that update.

21 THE COURT: Okay, thank you. Does anyone want to
22 cross-examine Mr. Jorgensen on his declaration? Okay.

23 Again, I've reviewed his declaration carefully.
24 It, like other declarations that I've already admitted into
25 evidence, cites the CDC estimates for drug overdose deaths

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1 in 2020, and also as we've just heard, focuses on the State
2 of Arkansas for that sad statistic.

3 I will admit Mr. Jorgensen's declaration, subject
4 to admitting Mr. Lane's declaration, and the limitations
5 generally as to any assumptions as to other parties' actions
6 that would derive from third parties as being only Mr.
7 Jorgensen's analysis or prediction.

8 But I will note that his task here, I believe,
9 qualifies him to make such predictions and analyses, given
10 his role on behalf of the AAC; that is the Association of
11 Arkansas Counties.

12 So you can sign off Mr. Jorgensen.

13 MR. JORGENSEN: Thank you, Your Honor.

14 THE COURT: Okay. And then can we pull up Mr.
15 Lane?

16 MR. LIESEMER: Your Honor, Mr. Lane's declaration
17 goes to a very narrow point. Washington and Connecticut had
18 asserted that the document that is attached to Mr.
19 Jorgensen's declaration as Exhibit 1 did not fall under the
20 public records exception to the rule against hearsay. We
21 provide Mr. Lane's declaration to give assurance that it
22 does meet the public records exception. And so, he's not
23 speaking to any of the four prongs regarding the motion to
24 stay, so it's a very narrow point.

25 If Your Honor does not need Mr. Lane's declaration

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1 to admit all of Mr. Jorgensen's declaration, including the
2 exhibit, then I think we can dispense with that. We do not,
3 because of the narrow issue, we do not have Mr. Lane on
4 standby.

5 THE COURT: Okay. All right, well, let me ask Mr.
6 Goldman and Mr. Gold. Having seen Mr. Lane's declaration,
7 would you still challenge the admission of the report that's
8 attached as Exhibit 1 to his declaration, the Naloxone Saves
9 Program report?

10 MR. GOLDMAN: Your Honor, Irv Goldman. No, no
11 objection.

12 THE COURT: So I will admit Mr. Lane's declaration
13 for that purpose.

14 Okay. I think those are all the witnesses, so I'm
15 happy to go back now for brief oral argument by the
16 objectants, although again, I've reviewed the pleadings.

17 MR. LIESEMER: Your Honor, I'll just be very brief
18 and turn it over then to the other plan proponent objectors.

19 Let me just say two things: one is with respect
20 to, you know, your tentative rulings or what have you.
21 That's all fine, except for -- I'm just a civil litigator
22 that plays in Bankruptcy Court from time to time.

23 I am told that Your Honor's suggestion or
24 requirement that we provide notice of even a request for
25 sentencing, that is something that perhaps we should not

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1 agree to, given that this is an agreement between the U.S.
2 Attorney's Office and the Debtors, and we're not sure how
3 the U.S. Attorney's Office would feel about that; number
4 one.

5 Number two. If we're talking about just a request
6 for sentencing and not the sentencing date itself, we'll be
7 getting in front of the U.S. District Court. I mean, if
8 we're calling up the clerk of the court and asking for a
9 sentencing date and that somehow triggers a requirement to
10 tell the world that we've done so, that seems like kind of
11 stepping on the toes of the New Jersey District Court.

12 And finally and most importantly, Your Honor, is
13 I'm told that the sentencing schedule is going to be
14 scheduled plenty in advance of any hearing, reporting
15 likely, you know, 30-45 days. I can't guarantee because I
16 don't have the judge's calendar. But this again isn't
17 something that happens overnight; this is something that the
18 public is going to be invited to.

19 So we believe that, you know, giving notice as
20 soon as it's scheduled will give plenty of time for anyone
21 to do whatever they feel they need to do to protect their
22 rights.

23 THE COURT: Okay.

24 MR. LIESEMER: And then on the balance of harms,
25 we'll rely on Mr. DelConte's declaration and the extensive

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1 discussion of the cataclysmic harms that could occur to the
2 Debtors should this thing delay the -- should confirmation
3 be -- sorry -- emergence be delayed for any significant
4 period of time.

5 But I will turn it over to the various creditors'
6 group to make the principal argument with respect to the
7 balance of harm, the public interest, as well as the bond
8 issue.

9 THE COURT: Okay.

10 MR. PREIS: Good afternoon, Your Honor. This is
11 Arik Preis from Akin Gump Strauss Hauer & Feld on behalf of
12 the Official Committee. Can you hear me? Are there any
13 issues?

14 THE COURT: I can hear you and see you fine.

15 MR. PREIS: Okay.

16 THE COURT: Although you seem to be inside a
17 filing cabinet. I don't know, it looks -- I'm worried for
18 you, but that's okay. Now I see you're in a conference
19 room.

20 MR. PREIS: So I want to do this, if it's okay, I
21 want to address my oral argument first and then, hopefully,
22 that will inform my response to your proposal from a little
23 while ago about how you would propose resolving the issue
24 through a stipulation.

25 Can I proceed in that manner?

1 THE COURT: Sure.

2 MR. PREIS: Okay. And I'm going to, if I've
3 hesitated, it's because I want to try to speak through some
4 things, and so, it may take me a second to (sound glitch)
5 over.

6 In general, obviously, the Official Committee
7 vehemently opposed the movant's request. We actually spent
8 quite a bit of time with them trying to avoid this hearing
9 because we thought the offer we gave them gave them the
10 functional (sound glitch) of what they were asking.

11 They insisted on having the hearing. And lest any
12 of us forget, I won't belabor this, but during the course of
13 this hearing, approximately 30 people have died due to
14 opioid overdose. But notwithstanding our views regarding,
15 you know, the impropriety of this hearing, we must do what
16 we can to protect the interests of the 630,000 claimants who
17 are waiting to receive their money, that roughly 96 percent
18 of voting claimants who voted in support of the plan and
19 then 10 ad hoc groups who all expressed support and objected
20 to the stay motion.

21 So I'm going to pensively just address harm to the
22 movants and then the public interest.

23 On harm to the movants, I'm not going to address
24 equitable mootness; you addressed that already. The only
25 real other argument that the movants made is that the three

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1 state attorney generals argue that if a stay is not granted,
2 their ability to enforce their police power will be
3 irreparably harmed.

4 That's misguided for two reasons. First, it needs
5 to be repeated that there's absolutely nothing, has been
6 nothing, and will never be anything that stops anyone from
7 criminally prosecuting any of the Debtors receiving the
8 relief. Attorneys general and those that can bring the
9 criminal prosecution has had this (sound glitch) for more
10 than -- forever, and they've been investigating the Sacklers
11 for more than three years, and they had the right to gain
12 access to every piece of evidence the UCC and the NCSP
13 uncovered in one of the most thorough investigations ever in
14 the history of bankruptcy. If they thought they had a
15 viable criminal case, they would have brought.

16 Instead, they've gone out of their way to confuse
17 people, including their citizens, by blaming Your Honor for
18 issuing an order that gives permanent immunity to the
19 Sacklers, which they therefore cry -- used to cry
20 irreparable harm.

21 General Tong ordered on September 20th that the
22 Bankruptcy Court's ruling let the Sacklers off the hook by
23 affording them permanent immunity from lawsuit that would
24 hold them accountable for the damage they've caused.

25 General Ferguson in Washington ordered on

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1 September 2nd, the confirmation order let the Sacklers off
2 the hook by granting them permanent immunity from lawsuits
3 in exchange for (sound glitch) profits they made from the
4 opioid epidemic.

5 In fact, they well know that this is the
6 creditors' plan. If the states and municipalities that
7 drives the public (sound glitch), the NAS, the third-party
8 payers, the ratepayers, the hospitals who all overwhelmingly
9 voted in favor of the plan. They know this, but it's easier
10 for them to blame Your Honor and this Court.

11 Second, it cannot be the case that these three
12 AGs' ability to enforce (sound glitch) is irreparably
13 harmed, while the ability of no other attorney general
14 across the United States is similarly harmed. Indeed, we
15 actually are forgetting that there are five other state
16 attorneys generals who are vigorously appealing the
17 confirmation order and the District of Columbia which have
18 not joined in the request for a stay. They all looked at
19 the facts and circumstances of the case and determined
20 there's no irreparable harm to the citizens of their state
21 if the plan is permitted to be effective without a stay.

22 Said another way, 94 percent of the AGs
23 representing 95 percent of the population chose to follow
24 the whim of 96 percent of the voters. So why is every
25 single creditor, other than three AGs, not seeking an

1 extraordinary remedy of a stay? Obviously, the answer is
2 the irreparable harm.

3 A lot has been written about this. Your Honor
4 said you read the papers. I'm not going to belabor some of
5 this, but I just want to note a few things.

6 You mentioned the CDC estimates. You mentioned
7 how they've gone up in the past year. The simple answer is
8 they're losing the fight in the opioid epidemic. But the
9 daily deaths, approximately 204, are opioid (sound glitch).

10 There are currently more than 1.6 million
11 Americans estimated to be suffering from OUD. By some
12 estimates, the annual cost of dealing with the opioid
13 epidemic is \$78 billion. Each day that funds are held back,
14 there are real-world and life-and-death consequences.
15 Abatement programs go unfunded, overdose reversal medicine
16 does not get distributed, community centers are not (sound
17 glitch). I could go on and on and on.

18 The point is, as Your Honor said earlier, every
19 day and every dollar makes a difference.

20 The three AGs and the U.S. Trustee are unswayed.
21 They give three responses. First, they argue that they're
22 working hard to get their appeals heard quickly, so a little
23 delay is tolerable. Second, they argue that the cases have
24 been delayed for two years by the UCC, among others, and
25 therefore, a few more months isn't going to matter in the

1 big picture or a few days. They argue the new National
2 Opioid Settlement that's bringing in lots of money, and
3 therefore, not getting money from the Sacklers isn't as bad
4 as it may seem.

5 These are dangerous arguments. Let's start with
6 the first one. No delay is tolerable.

7 The attorney general from the State of Missouri
8 recently stated that the number of opioid overdose deaths is
9 like a plane going down every day, a month, a year. As Miss
10 Juaire and Miss Trainor explained in their declarations,
11 they see the devastation every day.

12 Indeed, our office has fielded more than 500
13 calls, letters, and emails from victims over the past two
14 years and returned each one. We've listened to their
15 stories, we've grieved with them, we've attempted to explain
16 the injustice being done.

17 Indeed, yesterday, just as an example, I took a
18 call from Robert Bernhoff, a resident of the State of
19 Washington, who was in a 2009 ski accident, was prescribed
20 Oxi and was on it for three years and it changed and ruined
21 his life. Now why do I mention him? It turns out he was a
22 fifth grade teacher in 2006 for Attorney General Ferguson's
23 niece, and he asked that I note his unhappiness and the
24 State of Washington's attempt to (sound glitch) distribution
25 of funds.

1 If the U.S. Trustee and the attorney generals get
2 their wish and we're stayed for even six months, and
3 assuming that that's all it is, there will be 36,000 more
4 deaths; that's 1 percent of the population of the State of
5 Connecticut.

6 As Mr. Guard said in his declaration, it's
7 unconscionable that the remote chance that some (sound
8 glitch) creditor could recover some money from the Sacklers
9 on some distant day or that some known creditors could
10 receive additional money after years of litigation could
11 justify the additional death of a single American; Paragraph
12 14 of his declaration.

13 The second argument that the movants make is that
14 the case has already been delayed for two years by the UCC,
15 among others, and therefore, incremental delay should be on
16 us and shouldn't be a big deal. We don't believe those
17 arguments even merit a response, but I just want to point
18 out a few things.

19 First, the UCC has done virtually everything in
20 its power since the day it was appointed to move (sound
21 glitch) out for abatement and victim compensation. We all
22 know what happened with the ERF. We saw the potential that
23 this looks to be a long case, and we tried very hard to get
24 money out to community organizations two years ago.

25 Everyone knows, now in hindsight, look at how

1 important that money could have been if the DOJ, among
2 others, was one of the biggest opponents to the ERF.

3 Second, I won't go through everything that's
4 happened over the course of the last two years. But to be
5 clear, there was six months of mediation, of which three
6 months was just public and public negotiations and three
7 months of public and private negotiations, six months of
8 mediation with the Sacklers, another three or four months to
9 document the deal, and the elongated confirmation hearing.

10 All that has occurred with the movants sitting
11 there and watching and being part of every little piece of
12 it. I'm not criticizing them, but they couldn't say that
13 the past two years, because the case has lasted two years,
14 that in some way that another few days isn't going to make a
15 difference.

16 The movants' third rationale, and admittedly only
17 Generals Tong and Ferguson make this harmfully misleading
18 argument, is that there's money from other sources coming
19 in, and so the Purdue money -- not getting the Purdue money
20 now is tolerable. Specifically, AGs Tong and Ferguson
21 trumpet the National Opioid Settlement with three
22 distributors and Johnson & Johnson, 26 billion over 15
23 years. Without a doubt, the UCC applauds these efforts,
24 although ironically, the State of Washington hasn't agreed
25 to it.

1 But what the AGs don't say in their papers, and
2 indeed, they haven't said publicly in anything we can find,
3 is that not one dollar of the 26 billion goes to private
4 side claimants. That's not an accident.

5 But why am I raising that here? Washington and
6 Connecticut makes such a big deal about the NOS in their
7 papers, and they say that the money is coming in, but they
8 don't say that 1.4 billion of the Purdue money goes to
9 claimants who are getting zero from the National Opioid
10 Settlement. It's something they don't want to admit.

11 Moreover, it's just innate to say that an (sound
12 glitch) claimant because they're getting money from the NOS
13 and tolerate some delay in getting the Purdue money. The
14 cost of the opioid crisis is \$78 billion a year.

15 As Your Honor said on August 23rd and during the
16 confirmation hearing, it just seems really boneheaded to say
17 this 4.25 billion won't pay off from all the opioid (sound
18 glitch), you shouldn't take it.

19 With that, Your Honor, I'll turn to the public
20 interest program.

21 The U.S. Trustee states that the co-op with the
22 U.S. Trustee and the public interest are, "one in the same"
23 because the government's interest is the public interest.
24 The U.S. Trustee further states that when the government is
25 the movant, the public interest and irreparable injury fact

1 (sound glitch), despite through a number of cases for that
2 proposition.

3 Let me respond in four ways. First, not one case
4 that the U.S. Trustee cite stands for the proposition that
5 when the U.S. Trustee is the movant that the federal
6 government's interest is the one being implicated for
7 confirmation over (sound glitch).

8 Knowing this, in its appellate papers, the U.S.
9 Trustee has started referring to itself as the government,
10 as opposed to the Office of the United States Trustee.
11 We're not disputing that the U.S. Trustee's website says
12 that it's a component arm of the DOJ. But perhaps the U.S.
13 Trustee has not cited any cases where the U.S. -- because
14 the U.S. Trustee is never a creditor. And therefore, it's
15 role as a so-called (indiscernible) doesn't merit its
16 interest being equated with the public for the purpose of
17 this analysis.

18 In other words, no one with the (sound glitch) to
19 say that such an extraordinary remedy that should only be
20 granted in the most narrow of circumstances. Perhaps courts
21 should be wary of holding up the will of actual creditors
22 for the desires of a non-creditor.

23 Second, under the facts and circumstances of this
24 case in particular, it's inexplicable that the U.S. Trustee
25 is taking the position that its interest are those of the

1 government. To be clear, there are other federal government
2 interests in this case, and not one of them has brought a
3 motion for a stay pending appeal.

4 Even the DOJ, who is unimaginably -- imaginably
5 filed amicus briefs all but appealing the confirmation order
6 and objecting to confirmation has not asked (sound glitch)
7 pending appeal. The DOJ settled its civil claims for 225
8 million. They settled their criminal claims for 225
9 million. They settled their unsecured claims for 65
10 million. The various governmental agencies settled their
11 issues with Purdue and other private side claimants and
12 public side claimants by taking 4 percent of the amount that
13 was going to go to PIs and taking and transferring it to
14 themselves.

15 So the case where every governmental entity that
16 is a creditor has already settled with Purdue and the
17 Sacklers and the other plaintiffs is either getting money on
18 the effective date or has already received such money. It's
19 pretty difficult to believe that the U.S. Trustee, which is
20 not a creditor, nor does it act in any interest other than
21 what it perceives to be others' interest, to take the
22 position its acting as the government.

23 Third, (sound glitch) for one moment that the U.S.
24 Trustee could credibly argue that their interests are those
25 of the government. In that instance, the question is, is

1 the government's interest really coterminous with the public
2 interest in this case. Let's consider the following
3 factors.

4 First, between 2008 and 2017, the Sackler's family
5 took approximately 11 billion out (sound glitch). Of this
6 amount, 4 billion went straight to the federal government in
7 the form of taxes. That makes the federal government not
8 only the biggest recipient of Sackler money in the last 13
9 years, but the transferee of an alleged fraudulent
10 conveyance. Yet, the federal government has not once
11 offered to make this money available for opioid abatement
12 for victims of (sound glitch).

13 Second, the DOJ settled their civil differences
14 with the Sackler family in 2020 in return for a cash payment
15 of 225 million. They received the money. They refused to
16 agree that the money would be earmarked for opioid abatement
17 and compensation or in ERF.

18 Third, they settled their criminal claims against
19 Purdue in 2020 in return for 225 million and an unsecured
20 claim of 25 million. Unlike every single other opioid
21 claimant in the case under the plan, the DOJ refused to
22 agree that their money would be used for abatement or victim
23 compensation.

24 Fourth, in 2007, in return they received -- they
25 settled their differences with Purdue in return for 634

1 million, none of which was earmarked for abatement or victim
2 compensation, and Purdue's agreement to comply with the CIA
3 for five years. The terms of the CIA are publicly
4 available. To be clear, Purdue was required to maintain a
5 reporting to the federal government. During those five
6 years, Purdue generated the most money they did and took out
7 the most money out of Purdue during the 2008 to 2012 period.

8 Yet, after all public and private companies, they
9 were done with mediation, the federal government, through
10 its agency, entered to negotiate and demanded and took 25
11 million for personal injury claim and transferred that to
12 federal agencies. The DOJ's settlement with Purdue contains
13 a clause (sound glitch) under certain conditions, one of
14 which will occur if the U.S. Trustee prevails in its appeal,
15 the DOJ (sound glitch) a \$2 billion priority claim ahead of
16 all the other opioid claimants.

17 So again, not only if their appeal wins do the
18 claimants not get anything, but the DOJ takes all of it.
19 (sound glitch) negotiations of the ERF, the DOJ argued
20 vigorously against the ERF. During the UCC's investigation
21 of the Sacklers, the DOJ refused to insert itself on the
22 claims (sound glitch) in any discovery dispute regarding the
23 documents uncovered in the DOJ's investigation.

24 In other words, when given the chance to help the
25 public by joining forces with the UCC and the (sound

1 glitch), the DOJ didn't do anything.

2 And perhaps most egregiously, the U.S. Trustee
3 argues that the due process rights of PIs have been violated
4 because of the imposition of the non-consenting third-party
5 releases. Unbelievably, the U.S. Trustee went out and tried
6 to recruit personal injury victims who will join their
7 brief; apparently, their first foray into speaking to
8 personal injury victims in this case.

9 Yet, nowhere in their papers did they explain the
10 reality that if they are successful in their appeal, it's
11 almost certain that every single one of the Debtors' 140,000
12 personal injury victims will receive close to zero, if not
13 zero, in their own litigation.

14 Fourth, the Official Committee contends the public
15 interest in this case overwhelmingly supports denying the
16 stay for the reasons of the irreparable harm that I
17 mentioned earlier, the overwhelming support of the voters,
18 the overwhelming support of the ad hoc group.

19 Indeed, I think it's fair to say that there's
20 never been a case where the public interest is so
21 overwhelmingly opposed to the (sound drops).

22 Your Honor, with that, I'd like to address the
23 proposal that you made about 15 minutes ago.

24 THE COURT: Okay.

25 MR. PREIS: If I understood your proposal earlier,

1 Your Honor said that it'll be -- a condition to the
2 effective date is that it will be the earlier of January 7th
3 and the District Court ruling; is that correct? Do I have
4 that right?

5 THE COURT: Well, first, I have not -- this
6 proposal does not contemplate the entry of a stay. What it
7 contemplates is the denial of the stay motions without
8 prejudice to the future right to bring them on the
9 conditions of the denial and that it lays out the
10 conditions.

11 And the first condition is, in fact, that the
12 appellees would agree that the effective date would not
13 occur until the District Court's ruling and January 7.

14 MR. PREIS: So if I understand that correctly and
15 if the Debtors are not permitted to seek a sentencing
16 hearing earlier than January 7th, which was I believe
17 another condition, then it's possible if, as we all heard
18 Judge McMahon say that she -- you know, she has a trial
19 coming up on December 7th, and we kind of read between the
20 lines that Her Honor may rule before that.

21 Then between, let's call it December 7th and
22 January 7th -- now actually, it's really January 14th
23 because we can't go into (sound glitch) until seven days
24 after the criminal sentencing, you would be delaying (sound
25 glitch), but because by those terms. Is that correct? I

1 want to understand if that's what you meant.

2 THE COURT: Well, yes, correct. And that's
3 primarily to give the movants the opportunity to renew their
4 motion.

5 MR. PREIS: Again, (sound glitch) that will be 37
6 days -- I'm sorry -- 30 days, 37 because (crosstalk).

7 THE COURT: Well, except that under Rule 8025,
8 unless Judge McMahon shortened it, there would be 14 days
9 added on to the December 7th date, so you'd be at December
10 21.

11 MR. PREIS: Right. Which is I think why in the
12 original proposal, we get offered December 20th, which I
13 understand was not December 21. The only reason I'm raising
14 this is because part of our argument, the irreparable harm
15 (sound glitch). And I know Mr. Kaminetzky said, you know,
16 being December 20th to December 30th is okay. And then, you
17 know, there was some discussion about the holidays, so let's
18 move it to January 7.

19 In effect, we've now elongated almost more than
20 half a month before -- if it turns out that Judge McMahon
21 actually rules by December 7 and we're able to get a
22 sentencing hearing by December 20th, we will move their
23 effective date by 17 or 18 days at the very least. And
24 again, from our perspective, every day matters.

25 THE COURT: Well, except -- let me address that

1 because, again, I fully accept that there is almost
2 immeasurable harm in not getting the plan distributions to
3 PI claimants and to the state and governmental entities for
4 the purpose of abatement, and the other entities, the Indian
5 tribes and the hospitals and the like.

6 But based on my understanding of the plan and Mr.
7 DelConte's testimony, the money wouldn't actually go to them
8 until sometime after the effective date and probably weeks
9 after the effective date.

10 So I think that the real issue where the balancing
11 of the harms comes into play or the real time comes into
12 play is where the movants would seek a stay after the
13 District Court's ruling, pending appeal to the Second
14 Circuit.

15 MR. PREIS: I don't dispute your reading of Mr.
16 DelConte's declaration. But isn't what all you've done is
17 just move the same period back (sound glitch).

18 THE COURT: I did. I moved it a week from the end
19 of the year to January 7th, and that's basically because --
20 or arguably two weeks from December 21 to January 7, and
21 that's basically because I have some concerns about imposing
22 a hearing date on Judge McMahon around New Year's Eve or
23 around the Christmas holiday, so that's the only reason.

24 And it didn't seem to me, given the testimony,
25 that the delivery of the distributions beyond the trusts

1 would happen any slower because of that.

2 MR. PREIS: I'm sorry, that wasn't my point. I'm
3 sorry.

4 What I was trying to say is if all you've done is
5 move the initial distribution date back from December 21 to
6 January 14th or whatever it is, then that same period,
7 between the time the money first goes to the trust and the
8 money goes out, that same increment just gets added whenever
9 the money first goes out (sound glitch).

10 So that delay, that lag from the time the money
11 goes to the trust to the time it actually goes out, that
12 occurs no matter when the money (sound glitch) mid-January,
13 then you have a delay of (sound drops).

14 So the fact that there's -- you understand what
15 I'm saying or am I not making myself clear?

16 THE COURT: No, I do. I understand. For example,
17 the 14 days for the states to deliver their final NOAT
18 allocation would start running from the effective date,
19 which would be those 14 days later. I do see that.

20 MR. PREIS: Yes, that was my point. And that's
21 why when I said every day mattered, so it is actually by
22 moving everything back 17 days, it has a real effect. So
23 anyways, that was my first point.

24 My second point is --

25 THE COURT: Well, could I interrupt you for a

1 second? I guess for mootness purposes, it doesn't really
2 help to change it to the distribution date, as opposed to
3 the effective date because the effective date is also the
4 date when you transfer it to the trusts and set up NewCo,
5 the benefit company.

6 So I'm thinking out loud, but I think you may have
7 offered a solution of just making it the distribution date,
8 but I don't think that works for mootness purposes.

9 MR. PREIS: Yeah.

10 THE COURT: Okay.

11 MR. PREIS: The second point, and I know Mr.
12 Kaminetzky raised this, this idea of having to give public
13 notice of when the Debtors even request the notice.

14 THE COURT: No, I understand. I understand that
15 point. I don't think that really helps very much in any
16 event. I mean, the key thing is when the District Court
17 schedules it.

18 MR. PREIS: Correct, yes.

19 THE COURT: Right.

20 MR. PREIS: Okay, that was it. Okay, that was it,
21 Your Honor. That's all I had. Thank you.

22 THE COURT: Okay.

23 MR. FOGELMAN: Your Honor, may I briefly respond
24 to Mr. Preis's, frankly, outrageous accusations against the
25 government?

1 THE COURT: I think you have a right to do that,
2 Mr. Fogelman.

3 MR. FOGELMAN: Your Honor, I just want to say
4 about everything Mr. Preis said was a mischaracterization or
5 just absolutely blatantly untrue. That time, Your Honor, is
6 all entirely irrelevant as to whether a stay should be
7 granted.

8 And, you know, I'm happy to go into everything one
9 by one if Your Honor would like. Again, I don't think any
10 of this is even relevant, but just to give one brief
11 example. The government, you know, submitted a letter to
12 the Court at Mr. Preis's urging, when the government first
13 was in settlement negotiations with the Sacklers and Mr.
14 Preis raised the issue about providing those funds toward
15 abatement.

16 And we clearly explained to the Court on the
17 record that the government is constrained in how it can
18 respond by the Miscellaneous Receipts Act. And that, in any
19 event, while we couldn't direct those monies towards an
20 abatement fund, you know, the largest recipients of civil
21 recoveries are federal health care agencies that provide
22 billions of dollars towards opioid use disorder treatment.

23 So for Mr. Arik to stand up there and make the
24 statements he made is absolutely outrageous, Your Honor, and
25 completely irrelevant.

1 I'm not going to -- sorry.

2 THE COURT: Anyway, I think it is largely
3 irrelevant. The only way it is relevant or the remarks
4 about the role of the federal government in the case and in
5 history of prior settlement really goes to what the U.S.
6 Trustee's public interest argument is.

7 And in that sense, I think the U.S. Trustee has
8 been clear, in front of me at least, that it's not focusing
9 on anything other than its party in interest right as a
10 watchdog over the bankruptcy system, not on the other
11 interests of the federal government.

12 And on that point, Mr. Preis is basically just
13 saying that, you know, the watchdog is, in his view, barking
14 at the wrong person. But I think we should just cut it off
15 at this point.

16 MR. FOGELMAN: Thank you, Your Honor.

17 THE COURT: Okay. Should I hear from the ad hoc
18 group of states and other plaintiffs?

19 MR. WAGNER: Yes, Your Honor. Jonathan Wagner
20 from Kramer Levin Naftalis & Frankel, representing the ad
21 hoc committee of governmental and other contingent
22 litigation claimants. Can you hear me?

23 THE COURT: Yes.

24 MR. WAGNER: I'll make some introductory remarks
25 and then address the issues of irreparable harm, balance of

1 hardship, and public policy. And I'll address a long-term
2 stay and short-term stay, and I'll try not to repeat the
3 arguments that have been made today.

4 It's important to remember that the committee
5 represents dozens of governmental agencies and entities.
6 And despite the handful of state objections and the U.S.
7 Trustee's objection, far more government entities support
8 the plan and oppose a stay than seek a stay; it's really far
9 more.

10 And there's a super-majority of states who support
11 the plan and 97 percent of the non-federal domestic
12 governmental entities who voted on the plan voted in favor
13 and there's a good reason for that and Your Honor has
14 recognized that in the confirmation decision. The sooner
15 the money is allowed to be spent on abatement, the better
16 the citizens of those states and those supporting states and
17 local governments will be.

18 And despite suggestions to the contrary, the
19 dissenting states, their citizens will benefit as well.
20 They'll get their fair share of the monetary recovery, and
21 they'll get non-monetary benefits as well.

22 So let me now turn to irreparable harm, balance of
23 hardships, and public interest. In terms of a long-term
24 stay, that issue has been addressed in Mr. Guard's
25 declaration, which Your Honor I know has read and read

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1 carefully, and it's been addressed in the other declarations
2 as well.

3 And just to sum up at Paragraph 16 of his
4 declaration, "The abatement plan is designed to save lives,
5 and any delay in funding the abatement plan will thwart that
6 critical goal." And between now and June, there's close a
7 billion dollars that's supposed to be allocated with respect
8 to abatement. That's a serious amount of money.

9 In terms of a short-term stay, I make three
10 points. Most of the points on the short-term stay have been
11 made already, including with respect to equitable mootness --
12 - that's clearly off the table -- the mechanics of the
13 sentencing, and also the suggestion that somehow the Court
14 can cherry pick the settlement here and have it rejigger.
15 This was a settlement that was really a herculean task to
16 achieve, and it was carefully constructed and can't easily
17 be pulled apart.

18 The three points I want to make on the short-term
19 stay are as follows. First, burden matters, and here the
20 burden is squarely on the movants, and they have not
21 satisfied their burden.

22 Second, a stay, even a short-term stay, creates a
23 cloud and to give one -- and an unnecessary cloud. And just
24 to give one example, the committee has been interviewing
25 potential board members for the MDT, the NOAT, and for

1 NewCo. And I think it's not a stretch to say that the more
2 there's a delay in the effective date of the plan, the more
3 the candidates -- some of them are very prominent people --
4 may be reluctant to sign on.

5 And then the final point I want to make with
6 respect to the short-term stay is that the Court has to
7 exercise its equitable powers sparingly. That's, in many
8 cases, just give you a couple, United States against Veres,
9 1989 U.S. District Lexis 7069 at *17, "A court should
10 exercise its equitable powers sparingly." And the same
11 point is made in many bankruptcy cases, In re Rix 2015 B.R.
12 Lexis 3988 at *6.

13 And in light of the safeguards that have been
14 offered here, it would be an improper exercise of the
15 Court's equitable powers to grant a stay.

16 The last point I want to make, and I hope this
17 isn't a point that Your Honor has to address, is the bond.
18 I don't think Your Honor needs to get into the issue of
19 whether the U.S. Trustee needs to post a bond because the
20 states do. And Your Honor made the point, citing the
21 advisory committee language and other opponents of the stay
22 have cited the cases, that made clear that the states can't
23 piggyback on any rules that might apply to the U.S. Trustee.

24 That's all I have, Your Honor, unless you have any
25 questions.

1 THE COURT: Okay. Well, I guess -- look, what
2 I've been considering is not a stay, but an order denying
3 the motion on conditions, so that would obviate the need to
4 deal with a bond. And, you know, I don't think that your
5 side of the issue would prefer a stay with a bond to that,
6 right?

7 MR. WAGNER: Certainly not.

8 THE COURT: Okay, all right. Thank you.

9 MR. WAGNER: Thank you.

10 THE COURT: I'm also assuming, because I would
11 also, if I were to grant a stay, condition it on the ongoing
12 commitment as the appellants have already committed, to
13 pursue all appellant relief on an expedited basis. But I'm
14 assuming they will continue to do that based on their
15 statements and their understand of the importance of
16 resolving these issues promptly.

17 MR. LIESEMER: Your Honor, may I be heard very
18 briefly?

19 THE COURT: Sure.

20 MR. LIESEMER: Jeffrey Liesemer on behalf of the
21 MSGE Group.

22 Your Honor, when Judge McMahon ruled on the United
23 States Trustee's emergency motion for a stay before she
24 denied it without prejudice and she did so on the condition
25 that the appellees, which included the MSGE Group, enter

1 into a stipulation saying that all of the preparatory
2 actions under the advance order are not a basis for invoking
3 equitable mootness. She ordered the Debtors to impose a 14-
4 day advance notice requirement on any effective date, and
5 she also said that the appeals would proceed on a rocket
6 docket.

7 And on that basis with those guardrails in place,
8 Judge McMahon said that the U.S. Trustee's speculation about
9 the possibility of equitable mootness did not rise to the
10 level of irreparable harm, and I would submit that it's the
11 same today. There really hasn't been any material change.
12 The movants haven't identified anything that changes the
13 situation from the time that Judge McMahon has ruled.

14 And in addition to that, we have the Debtor, who
15 has offered up even additional guardrails, and Your Honor is
16 now contemplating guardrails as well insofar as denying the
17 stay motions with conditions.

18 So no showing with respect to irreparable harm and
19 specifically equitable mootness has been made, and I think
20 the motions can be safely denied on that basis, subject to
21 the guardrails, which Judge McMahon found to be sufficient
22 as is.

23 With respect to a longer-term stay, we share Your
24 Honor's concerns that that would clash with Rule 8025 and
25 essentially read Rule 8025 out of the bankruptcy rules. And

1 so, therefore, if there were a stay in place if they did
2 make their showing, then it would have to be limited up
3 through the District Court's ruling.

4 And with respect to the other elements, with
5 respect to balance of harms and the public interest and the
6 bond in the event that there would be an unlimited stay to
7 allow the appellate avenues to be exhausted, we simply stand
8 on our papers and on Colin Jorgensen's declaration.

9 Your Honor understands the point as time
10 progresses, the financial and human toll increases, and that
11 puts a big weight against any stay. And with respect to
12 public interest, there is public interest in settlements and
13 the finality of reorganizations and, above all, finding one
14 way to resolve this public health crisis.

15 So we join the other opponents in opposing any
16 stay pending appeal. Thank you.

17 THE COURT: Thank you.

18 MR. SHORE: Your Honor, Chris Shore from White &
19 Case on behalf of the ad hoc group of individual victims.

20 I want to -- and I've been feverishly kind of
21 working on my notes to address what I think is the issue
22 here, both respect the long-term stay, short-term stay, and
23 the idea of a denial of motions with conditions.

24 Let me start here. Look, we tried to address the
25 issue outside of Court with respect to essentially a denial

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1 of the stay without conditions. The appellants refused, so
2 now we have two pending motions with two separate requests:
3 one is a pending motion for a stay through the District
4 Court decision plus 14 days, and another is a request from
5 the U.S. Trustee for a stay through all appeals.

6 I think you need to deny both of those on the
7 merits with findings and conclusion. And you ask, why can't
8 I just do this simply if we prevail at the District Court on
9 the appeal, and we think we will -- we wouldn't be here
10 fighting this and have fought for the plan if we didn't
11 think we will -- there is going to be another hearing.
12 Whether that is in the end of December or the beginning of
13 January, someone's bringing a motion in front of Judge
14 McMahon for the big stay, the one that nobody can control,
15 which is the time between when the Second Circuit appeal
16 gets docketed and when the Second Circuit rules.

17 So there is a fact of a hearing coming up. And as
18 one of the very creditor constituencies who isn't either
19 funded by taxpayers or by the estate, we simply can't have
20 10-hour hearings all the time on these subjects without
21 getting work-product which can be used in subsequent
22 hearings.

23 So my request is that we actually make use of the
24 evidentiary record that's here, not just throw this to Judge
25 McMahon to deal with with her busy docket and to have a

1 whole other hearing, evidentiary hearing, which she may not
2 even have the time for given the announcement of what her
3 schedule is.

4 So let me turn to the merits on why you should
5 deny the stay and what the specific findings I'm talking
6 about. Let me just address very briefly the likelihood of
7 success because no one touched on this. I'll only say this:
8 The order that was presented to you reflected what the
9 Debtors conceded, not what anybody else did. We all became
10 appellants after that hearing, or at least we became
11 appellants after that hearing over the objection of the U.S.
12 Trustee and we all joined the argument. So that's a
13 technical argument that you can get rid of.

14 I want to focus on only one event: The day that
15 the Debtors are ready to consummate their plan but can't
16 because of some existing stay or the existence of some
17 conditions and how we protect the individuals, just the
18 individuals, from the harms accrue from that day forward. I
19 think those harms accrue whether the stay is short or
20 whether the stay is long, and I want to address an issue
21 that Mr. Preis raised on that (sound glitch).

22 Let me start here. You know that at the beginning
23 of the hearing that (sound glitch) rules are set up so that
24 (sound glitch) did this. It's not, I don't think, because
25 the Bankruptcy Court is likely to agree or disagree that its

1 own findings are subject to appeal or not, but rather
2 because the Bankruptcy Court is in the best position,
3 understanding who the parties are, what they're looking for,
4 what they're promising, and what the harms are in the event
5 there is or is not a stay.

6 So even if Judge McMahon were to rule before an
7 available exit and contemplate a further stay, this Court's
8 view of what (sound glitch) stay, that is a stay that would
9 exist through a Second Circuit ruling or a cert denial may
10 prove critical to her own analysis, which is likely have to
11 be conducted on a short notice brief period if and when that
12 (sound drops).

13 As to the harm calculus here, as we pointed out in
14 our objection, it's not a one-size-fit-all analysis. Each
15 applicant must make its own case based upon its own harmed
16 balanced against the harms to the others and the public.

17 The U.S. Trustee is in a different position than
18 the states. First, they allege no harms to themselves.
19 They have no economic (sound glitch) in the outcome of this
20 (sound drops). Two, the U.S. Trustee's claim, I think as
21 part of the public interest prong, is that there's a
22 societal harm of the erosion of constitutional rights of
23 individuals who allegedly have direct claims against the
24 Sacklers, which are being released for no compensation.

25 I'm not going to repeat arguments I made at the

1 last hearing regarding this no compensation argument. I'll
2 just say that the intention is both counterfactual in light
3 of the TEPs and inflammatory. But their whole analysis
4 centers on the harm to these hypothetical individual Sackler
5 claimants.

6 Now, as we pointed out in our objection, we
7 represent probably the bulk of individuals who would
8 otherwise have the right to bring claims against the
9 Sacklers in light of the fact that 35,000 of our group
10 didn't vote on the plan and several hundred voted no.

11 But I think the U.S. Trustee misses the mark when
12 they attack our group for what seems to be a criticism that
13 we do not speak for every victim. We have never purported
14 to speak for every victim. We've only purported to speak
15 for our group, and we have spoken, sometimes in a loud
16 voice, on behalf of those who've authorized us.

17 In contrast, not one victim has authorized or come
18 forward in support of the U.S. Trustee's motion for a stay.
19 And the important part here is not the authorization piece;
20 it's the lack of identification of the individuals who may
21 be harmed and a quantification of that harm.

22 At the last hearing, Your Honor spoke directly to
23 the U.S. Trustee about trauma and what you viewed as the
24 narrow window that it provides for direct claims against
25 non-debtor fiduciaries and shareholders. The time for them

1 to come forward with proof of harm was now. What followed
2 was not proof, but an attempt to cite to complaints that
3 allege claims squarely within (indiscernible) and Madoff.

4 There was a reference today to the Hartman
5 pleading, which they did not include. I don't know how they
6 expect Your Honor to make the analysis that everyone of
7 these circuit court says is you need to look at the
8 substance of the claim, not the label, to determine whether
9 they are derivative claims or individual claims. I've
10 reviewed the complaints. They are all classic-looking
11 derivative claim. You can't just say something is a
12 consumer rights claim when, in fact, it is just dressed up
13 as a breach of fiduciary duty claim by directors and
14 officers.

15 So this is a stay hearing where they are supposed
16 to come forward with evidence. Just saying that someone has
17 alleged it in a complaint does not quantify the harm of
18 denying that. There is no articulation -- these claims are
19 worth \$30, these claims are worth \$100, these claims are
20 worth a billion dollars. There is none of that in the U.S.
21 Trustee's application.

22 So what we are left with on their application in
23 the harm calculus is on the one side, the constitutional
24 rights of unidentified individuals with unquantified claims
25 that are hypothetically, but not proven, to be non-

1 derivative, all of which can be asserted and against and
2 recovered from the TADPs that will be funded by the
3 Sacklers. That's what their harm is.

4 Balanced against that and what the remainder of my
5 analysis focuses on and the real harms of real individuals
6 that accrue the moment the Debtors are ready to consummate
7 the plan, which could be December 14th, it could be January
8 6th, whatever, were contemplating that they won't be able to
9 do that because there is a pending order of court, whether
10 written as a stay or a denial of a stay with conditions.

11 And let me pause here because people are just
12 getting it wrong with respect to the harms. There are two
13 harm prongs and two things to be balanced. The applicant on
14 a stay needs to prove irreparable harm to them. They also
15 need to prove the lack of any harm to individuals. It's
16 their burden. And we're not talking about irreparable harm
17 because people aren't focusing on, and I think Your Honor
18 was alluding to it, what a bond means.

19 The bond is the source of recovery for people who
20 were harmed by the imposition of a stay. None of these
21 applicants have come forward and said regardless of whether
22 there's a bond, you can feel free to sue me if I turn out to
23 be wrong and I lose on appeal after a three-month delay.
24 That's not how bonds work.

25 Now, as to the harm for the individuals, which

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1 need to be protected, some of those harms are mathematically
2 certain. Under the plan, the personal injury victims don't
3 ride with the ups and downs of the Debtor. We get a fixed
4 (sound drops). Whether the plan is funded in December 2021,
5 January 2022, January 2023, or some other time, the fund and
6 this plan remains in place, the amount paid stays the same,
7 which means there is a certain loss of the time value of
8 money.

9 And to amplify what Mr. Preis said, with respect
10 to the individuals, once the trusts get funded, then the
11 notices -- remember, we had the hearing on the advanced
12 payments so that we can get the notices out immediately --
13 the notices go out. In addition, all the expenses, the
14 frontloaded expenses of the trust, can get paid. Then as
15 soon as someone gets a form, they can check a quick pay and
16 it can go back and we can start the distribution process.

17 So if the plan is delayed 14 days, the initiation
18 of that process starts 14 days later, the first payment that
19 goes out is 14 days after that. So there is a demonstrable
20 harm in any stay of the effective date of the plan beyond
21 the date that the Debtors are ready to go forward.

22 There are also mathematically certain but
23 unquantifiable fees of just the cost of continuing in the
24 bankruptcy case. The advantage of an effective date is
25 people can go pencils down with respect to issues that are

1 ongoing in the case. And again, we are not a state funded
2 or taxpayer funded, my participation in hearings like this
3 is just coming out of creditor recoveries.

4 I won't touch, because Mr. Preis did it so well,
5 the harm in delaying abatement funds. But in a world in
6 which a stay is in place for only 14 days, the Debtors are
7 told cool it 14 days and 10 -- let's leave aside debts
8 payment -- 10 new injuries occur, who's paying for that?
9 Why is it the Debtors responsibility? They wanted to start
10 the process of getting money out to people. The applicants
11 came forward and said, hold your horses, I've got
12 hypothetical rights that need to be protected here in the
13 interest of (sound glitch) and 10 new injuries occurred, the
14 United States Trustee is not stepping forward and saying
15 don't worry, we'll take care of those people.

16 But the real risk here, and which nobody is
17 articulated and which I think Your Honor needs to tell to
18 Judge McMahon, is the risk to the deal. Right? Now let me
19 start -- I'm still trying to wrap my head around a public
20 use of the plea bonds, a little example, but the personal
21 injury victims are not holding a gun to anybody. We have no
22 power over this situation. And unless and until the Debtors
23 are ready to consummate this plan and the Sacklers are
24 willing to fund, we're not getting anything. We can't
25 compel anybody to do anything.

1 And as to the risks of harm, the Court has a
2 detailed exhaustive record of the difficulties they faced
3 getting to consensus in these cases, the hard fought triumph
4 of the deal coming together, especially for victims, through
5 direct cash payments and the use of essentially all but the
6 U.S. Government's money for abatement.

7 This Court, not the District Court or the Second
8 Circuit, is in the best position to understand and
9 articulate the risks to Debtors, that it should articulate I
10 believe in findings and conclusions, when their effective
11 date gets stayed.

12 And the risk is what happens if something stops
13 the effective date of the plan. First, if this deal were to
14 fall apart prior to an affirmance, right? We get in a
15 situation where someone delivers a termination of the deal,
16 right, and then we find out we were right all along. And
17 were this case to liquidate, there's unopposed evidence that
18 everybody gets nothing. The liquidation analysis results in
19 a zero for individuals.

20 That's not hypothetical. Remember Mr. Preis said
21 to you with respect to the super-priority admin claim, the
22 U.S. Government has not committed that in the event that the
23 confirmation is -- or sorry -- the plan does not go
24 effective, they won't set forth their super-priority
25 administrative claim. In other words, there is a real

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1 possibility if this deal doesn't get to closure that all of
2 the money goes to the United States. Does anybody really
3 want to be responsible for that?

4 The Court's also in a unique position to
5 understand what basis what a big case like this puts forward
6 in terms of harms, the potential harms, to a deal in an
7 uncertain period. First, plans face market risks. During
8 this case, the Dow had its second biggest percentage drop
9 ever. Is anybody really committing that if the Dow goes up
10 30 percent that we're all going to let the Sacklers walk
11 away with that additional bounty, or if the Dow goes down 30
12 percent, the Sacklers are still going to be willing and able
13 to fund?

14 Plans face regulatory risk, right. I mean, those
15 risks in all fields that occurred or what they're talking
16 about there, let's get the Sacklers out of jail for free
17 deal, regulations change and what was possible at one point
18 in time may not be possible later. Again, is that really
19 going to happen between December 14th and January 7th?
20 Probably not, though not certain. But if we're talking
21 about informing Judge McMahon of what could happen between
22 January and August, that matters.

23 Plans face legislative risks. Nobody here, by the
24 way, none of the appellants here is committing that they
25 would not be pursuing any legislation that could have an

1 impact on this case.

2 Plans face political risk, especially in this case
3 in which half the creditor body are elected officials. The
4 notions that come or others will all stay in the deal as
5 their political landscape changes is not certain.

6 And as Your Honor noted during the confirmation
7 hearing, this settlement is around a shifting landscape of
8 judicial precedent that exists, all of which at any given
9 time will empower somebody who cut the deal to say they got
10 a bad deal and somebody else to say they got a good deal.

11 Obviously, the risks increase over time. But
12 nobody is promising anything if they are wrong in the law
13 and it takes long enough for us to prove that to the
14 Appellate Court that the plan falls apart and we have to
15 start over. Nobody is assuring that a plan which is
16 consummable on December 14 will still be consummable on
17 January 14th.

18 So how does this play out? Again, I think the
19 U.S. Trustee, given their role, statutory role, and the
20 absence of any direct harm to them and the fact that they're
21 purporting to speak on behalf of individuals and have yet to
22 articulate who they're speaking for, what their claims are,
23 and what they're worth should have their application denied
24 on the merits with prejudice right now with specific
25 findings about their lack of proof, with one caveat.

1 They've taken the position that they have zero
2 responsibility to post the bond. I don't need to get into
3 that argument at this late date. They have zero economic
4 responsibility if they're right.

5 So deny their motion. But they can be clear,
6 nothing prevents the U.S. Trustee from piggybacking off a
7 stay that is awarded to some other party, and nothing
8 prevents the U.S. Trustee from volunteering to post a bond
9 to protect for a month.

10 So what does a bond look like with respect to the
11 other applicants? I don't think any stay is necessary. I
12 think a denial of the stay with conditions isn't necessary.
13 But we have no objection to this Court giving Judge McMahon
14 until January 7th to rule.

15 But if the Debtors are ready to consummate before
16 January 7th, they should provide a notice, everybody, 14
17 days that we're ready to consummate. And that will give the
18 applicants the opportunity to post a bond in that window if
19 they want to have a stay or they can go to Judge McMahon if
20 they're riding on her stay, that is your stay is requiring
21 and she still hasn't ruled, that gives them an opportunity
22 to raise that with (sound drops).

23 Even with respect to this short bump, right.
24 That's our only source of recovery for both catastrophe and
25 the mathematically certain funds that accrue. We shouldn't

1 equate an opportunity for a meaningful appellate review with
2 a free opportunity for appellate review. And I tend to that
3 that if and when the states are forced into a position of
4 having to post a bond, they'll think long and hard about
5 their pursuit of further appellate relief beyond Judge
6 McMahon.

7 To form an amount, I'm not -- I can't quite figure
8 out how best to create the right dynamic for that. But it
9 seems to me that if the Court set a per diem or a bond for
10 the period between the time the Debtors are ready to rule
11 and when Judge McMahon are ready to exit and when Judge
12 McMahon rules, that will precipitate a discussion with Judge
13 McMahon about when she is able to rule. And it will allow a
14 ready calculation. If she says I can't do it by the 7th, I
15 can do it by January 30th, that's 23 days of per diem
16 (indiscernible). And I tend to think, as I said, that
17 sparks a conversation about how this is going to proceed
18 forward.

19 As to the larger bond, I guess if Your Honor is
20 not contemplating extending beyond the time that's necessary
21 for her to rule, it still, as I said, provides context if
22 you were to provide findings and conclusions that there are
23 real harms, demonstrable harms, and the manifest risk of
24 catastrophic harms that need to be protected with a bond.
25 Again, subject to upward or downward revision by Judge

1 McMahon and subject to what other parties use. But we're
2 talking about (indiscernible) in the hundreds of millions of
3 dollars or billions. Because if the risk were to manifest
4 itself, something comes out that causes somebody to walk
5 away from this deal and we end up in a liquidation scenario,
6 nobody wants to wear the risk of having stopped a plan which
7 would have provided (indiscernible) to people and that
8 turned out to be legal, but nonetheless was frustrated
9 because there was an open-ended stay in place.

10 Not one of the states has come forward and say
11 they didn't have the wherewithal to post a bond. And again,
12 a bond only sets the outside amount of the damages which get
13 compensated. If it turns out that they have to post a \$500
14 million bond and only a million dollars is proven to be the
15 actual damages, so be it. Then only a million dollars gets
16 compensated out of that. But we don't set a bond based upon
17 a hope that the debtors will be able to consummate in this
18 fixed 12-month window that the Second Circuit is going to
19 need to be able to issue what we all hope will be a ruling
20 which sets forth in chapter and verse exactly what the rules
21 are with respect to non-debtor reliefs.

22 The last point on these conditions. Conditions
23 run both ways. And this is why I think that the denial with
24 conditions on the Debtor which you are raising now is a bit
25 fraught. Conditions run both ways, right? The appellants

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1 here will be taking an opportunity of having an additional
2 14 days to do whatever they're going to do. Are they
3 allowed to legislate in that period? Are they allowed to
4 exercise their police powers in that period? Are they, as
5 Mr. Kaminetzky hinted to, able to stand in front of the
6 district court in New Jersey and argue that the Court should
7 adjourn that hearing? Right? Which would be the setup date
8 for how this goes forward. Are they required to commit to
9 move quickly as well? Are they free to argue in front of
10 the Second Circuit that they really need 90 days to file a
11 (indiscernible).

12 I just think lifting it and saying a denial with
13 conditions opens up a whole debate about what they're
14 allowed to do that I think (indiscernible) with a denial of
15 these motions on the merits or -- or if they want a stay, a
16 stay with an interim bond requirement, that is a shot bond
17 requirement and an understanding going forward of what that
18 stay -- that bond is going to look like if we are getting a
19 ruling, you know, at the end of December or the beginning of
20 January.

21 THE COURT: Okay.

22 MR. SHORE: And other than that unless Your Honor
23 has any questions, that's all I have.

24 THE COURT: Okay.

25 MR. ISRAEL: Good afternoon, Your Honor. Harold

1 Israel on behalf of the NAS Committee. May I be heard very
2 briefly?

3 THE COURT: Sure.

4 MR. ISRAEL: Thank you, Your Honor. The NAS
5 Committee, another entity that is not funded by the
6 taxpayers, represents the most innocent victims of the
7 opioid crisis, the NAS children, will focus its argument
8 exclusively on the irreparable harm and the public interest
9 in light of Mr. Shore and Mr. Preis' arguments which they
10 adopt.

11 The appellants in this case have made clear that
12 they will go to the ends of the earth to prevent the plan
13 from becoming effective. In the meantime, the opioid crisis
14 rages across the country.

15 A stay will mean, ironically, that the Sacklers
16 will retain all of their money, except of course what they
17 have to pay the professionals, while compensation to the NAS
18 children and the other personal injury victims will be
19 delayed indefinitely if not forever. There will also be a
20 delay of billions of dollars of abatement funds that would
21 otherwise be used to combat the opioid crisis and a delay in
22 making vital documents available to the public through the
23 document repository.

24 For what reason? So that the appellants can exact
25 vengeance on the Sacklers without any regard to whether

1 there will be any corresponding benefit to the personal
2 injury victims, including the NAS children, of the opioid
3 crisis.

4 To be clear, the NAS Committee had hoped for a far
5 larger settlement. However, the plan, including the
6 settlement and the third-party releases and the
7 corresponding public interest must be viewed in reality.
8 The NAS class voted overwhelmingly in favor of the plan, and
9 Kara Trainor, a parent of an NAS child, outlined in great
10 detail in her declaration why she supports the plan,
11 notwithstanding her personal situation. The appellants
12 ignore this massive support of both the voters and Ms.
13 Trainor in their pleadings.

14 Simply put, a stay of the confirmation order
15 delays implementation of what could be lifesaving programs
16 for opioid victims, current and future, and compensation for
17 some of the neediest people in the country. For what? So
18 perhaps the U.S. Government can get an additional \$2 billion
19 at the expense of all other claimants, a result worse than
20 the tobacco litigation? Or so three states or five states
21 can make life miserable for the Sacklers by litigating
22 against them for the foreseeable future, resulting in no
23 compensation to the NAS children and the other opioid use
24 victims and allowing the Sacklers to retain billions of
25 dollars that would otherwise go for abatement? Who wins in

1 this case?

2 Vengeance is not a purpose of the Bankruptcy Code
3 and will not compensate the NAS children or the other opioid
4 victims, will not fund research and other abatement
5 strategies, will not make millions of opioid-related
6 research documents available to the public domain. It will,
7 however, allow the Sacklers to retain more of their wealth
8 than they would under the plan. It cannot be said that such
9 a result is in the public interest. Thank you, Your Honor.

10 THE COURT: Okay, thank you.

11 I don't know if any other objectant wants to
12 speak. I forgot to ask Mr. Kaminetzky if he could update me
13 on the termination right that was addressed in the pleadings
14 and in Mr. Gold's argument.

15 It seems to me that, at least with respect to the
16 type of relief I am contemplating, it's highly unlikely that
17 that termination right would be exercised. But I'd like
18 your thoughts on where it stands, whether it's been waived
19 through the date that you've proposed and the like.

20 MR. KAMINETZKY: Apologies, Your Honor, for that
21 dramatic camera movement.

22 The answer is I don't -- we have not had that
23 discussion. Maybe you should ask the Sackler. This is
24 something that was heavily negotiated and it's in there,
25 it's part of the agreement. I would suspect that it won't

1 be a problem given the short term that we're talking about.
2 But kind of following up, I mean, it's in there, and it's
3 their right to waive it or not.

4 Unlike the previous way that we talked about
5 before when it came to the direct certification, I don't
6 have an answer sitting here whether or not they'd waive, but
7 I certainly hope that they would.

8 Maybe it's time to mention just to underscore --
9 and maybe this is the appropriate time in the changing
10 landscape. During this hearing, actually, the Oklahoma
11 Supreme Court reversed the J&J judgment, saying that public
12 nuisance statute doesn't apply in this area to legally-
13 manufactured products. And this comes on the heels of the
14 California decision earlier this week going the same way.

15 But let me just leave it at that. And, you know,
16 I assume you could direct this to the Sacklers.

17 THE COURT: Okay. Well, do I have the two sides
18 of the Sacklers' counsel on the call?

19 MR. UZZI: Your Honor, it's Gerard Uzzi of
20 Millbank on behalf of the Raymond Sackler Family.

21 THE COURT: Afternoon.

22 MR. UZZI: As it relates to -- go ahead, Your
23 Honor, I'm sorry.

24 THE COURT: I was going to say, first of all, I'm
25 not sure whether the denial of these motions as I've posited

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1 it would trigger the termination right. But assuming it
2 did, would that brief extension be something that your
3 clients would be prepared to assert as a termination right?

4 MR. UZZI: Well, Your Honor, just before I get to
5 that, just to check a box. As it relates to what Mr.
6 Kaminetzky raised on the issue of certification, that has
7 been waive. I think, frankly, we had formally memorialized
8 it (indiscernible).

9 THE COURT: Right.

10 MR. UZZI: As it relates to -- I think the
11 termination right you're referring to now is that three
12 months after confirmation date -- there has not been a
13 request made of our clients to waive that. So I'm not in a
14 position today to say (indiscernible) specifically on that
15 issue. And right now we are anticipating at least that the
16 court is going to rule before then, the district court is
17 going to rule before that time.

18 Your Honor, I don't want to speculate as to if and
19 when I do consult with my client as to what they'll say
20 other than to say we've come this far, Your Honor. There is
21 certainly not a desire to abandon this at this point.

22 THE COURT: Okay, thank you.

23 Ms. Monaghan, I know you represent the other side
24 of the Sackler family.

25 MS. MONAGHAN: Correct, Your Honor. On behalf of

1 the so-called Side A of the family, we are in the same
2 position as Mr. Uzzi is in that no request was made of us
3 for a waiver. That said, we're not looking to walk away
4 from the settlement in any regard. I just haven't actually
5 gotten instruction from my clients on the questions they
6 have put to us.

7 THE COURT: Okay, thanks. Okay. I said that I
8 would be willing to hear a brief rebuttal, but I really want
9 this to be very brief, not a rehash of arguments that have
10 previously been made, if anyone wants to speak in rebuttal.

11 MS. LEVINE: Your Honor, this is Beth Levine. My
12 computer is going very slowly right now, so hopefully we'll
13 get video in a second. I did just want to speak briefly. I
14 will try not to repeat anything. I wanted to address a
15 couple of things that have been raised that I think are
16 inaccurate.

17 You know, there was a suggestion that it is
18 somehow improper for us to seek a hearing because while we
19 tried to negotiate a consensual resolution, it didn't work.
20 And we did as part of that effort suggest why don't you give
21 us -- you know, if you've got a list of things you have
22 exempted from the stay, tells what they are. And, you know,
23 it didn't work.

24 THE COURT: I am not blaming either side for the
25 fact of this hearing. I had the opportunity after the

1 appellees sent me an email requesting a chambers conference
2 to meet and see if a settlement could be obtained. And I
3 just concluded it was of more benefit to have a full record.

4 MS. LEVINE: Thank you, Your Honor. There were
5 suggestions or allegations that the United States Trustee is
6 taking the position it's taking because it's trying to get
7 the, you know, \$2 billion. And that is just an absolutely
8 baseless allegation. I think if Your Honor wanted to hear
9 more about that, Mr. Fogelman could address it. But I think
10 it's enough to say that that's baseless. We've taken this
11 position on the non-debtor releases the whole time. It's
12 not just some way to try and get back that money.

13 With respect to the United States Trustee's role,
14 I think you've recognized in your comment that, you know, we
15 are not representing the government in its creditor role,
16 but we are representing the government in the government
17 interests. We obviously have a disagreement on where the
18 public interest is. You know, we've talked about the harm.
19 I don't want to repeat myself but, you know, we don't
20 represent individual victims, White & Case doesn't represent
21 individual victims. They've acknowledged they don't
22 represent anyone. There are individuals who have come
23 forward and objected. There have been over 200,000 people
24 who voted no. So we've cited some of those examples. Ms.
25 Isaacs, for example, Mr. Hartman. And we did include the

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1 complaints in our request for judicial notice, including Mr.
2 Hartman's complaint.

3 With respect to the suggestion that we might
4 voluntarily post a bond, we don't have the authority to do
5 that, so we think that's just not a factor to be considered.

6 THE COURT: Well, I would consider it in the sense
7 of it's a factor to consider in balancing the harms. Not as
8 something that I could require, but the absence of one may
9 make it harder to balance the harms in your client's favor.

10 MS. LEVINE: I do think it's interesting with
11 respect to this question of the termination right. There
12 are two questions. One is just as a factual matter; my
13 understanding is that termination right doesn't come into
14 play if there has been a delay because of licensing delays.
15 And we don't know what the status is, but we think it's
16 interesting that the Debtor's proposed the stipulation
17 without checking on that. But we don't think, as we put in
18 our papers, that that is likely to happen. And it does not
19 sound like it is based on what's been said here today.

20 Lastly, you know, obviously we are here on our
21 motion. We're asking for a stay at least until the district
22 court's decision. But with respect to the order it sounds
23 like you are considering, you made a comment that I wanted
24 to clarify, which is whether you're suggesting you would
25 enter or include in your order a limit on the ability to

1 seek a stay from the district court.

2 THE COURT: No, I don't remember saying that.

3 MS. LEVINE: Okay. Then I may just have not heard
4 that correctly.

5 THE COURT: It's just the opposite. You would
6 have the ability to seek a stay from the district court
7 after you get the notice.

8 MS. LEVINE: Your Honor, it's been a long day. I
9 don't want to repeat what we've said. Obviously we disagree
10 with a lot of what the stay movants had said, but we will at
11 this point stand on our papers and I will cede the floor to
12 any other movants who had something to add.

13 THE COURT: Okay.

14 MR. EDMUNDS: Your Honor, if I may just for less
15 than a minute. Brian Edmunds for the State of Maryland. I
16 would just point out some of the overarching themes that
17 have been presented to you, that we are a state and we are
18 charged with protecting our public and believe that we are
19 doing that in appealing. And I think that some of the
20 arguments that would give to us the status of essentially a
21 private creditor are what requires us to appeal. I think
22 that it's our job, and we do this, to protect. And we are
23 spending money now on the opioid crisis on trying to abate
24 it. And I think that our -- I think it's important to
25 remember that and recognize that, that we wouldn't be doing

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1 this and pursuing an appeal if we didn't think that we were
2 serving the public. And that's all I have, Your Honor.

3 THE COURT: Okay.

4 MR. GOLD: Your Honor, Matthew Gold, Kleinberg
5 Kaplan. Can you hear me?

6 THE COURT: Yes.

7 MR. GOLD: Thank you. Your Honor, I too will be
8 very brief. First, I just want to note that the argument
9 that Mr. Preis made, and we've heard this several times
10 about how criminal liability is not being affected by this,
11 is a total red herring. No one has ever contended the
12 criminal liability was implicated by this, but that's not at
13 all the point. The states have a significant statutory
14 scheme that involves both criminal and civil penalties for
15 which to go against wrongdoers. And among other things,
16 there are different burdens of proof. And that's why the
17 states have both criminal and civil laws that play in this
18 area.

19 And it's not for Mr. Preis or the Debtors to say
20 you have your criminal remedies, that's enough, you don't
21 need those other ones, in the first instance. And secondly,
22 for us to be pointing out that the result of this settlement
23 and this plan is to give the Sacklers complete immunity of
24 their opioid-related obligations on the civil side does not
25 mean that we're implying that it has anything to do with the

1 criminal liability. And it's valuable enough that the
2 Sacklers have been insisting on it. So I think that's just
3 simply a matter of misdirection.

4 Second, I just want to note Mr. Shore, after
5 making a statement about how we needed to not engage in
6 speculation and to needed concrete matters, engaged in a 10
7 to 15-minute series of speculations and hypotheticals about
8 various risks without evidence about them occurring, but
9 simply as speculation that this might happen and that might
10 happen as risks involved of Court's resolution. We submit
11 that those are not germane for these purposes and have no
12 demonstrated basis other than just speculation.

13 Third, I just want to note that this morning, I
14 stated for the record, and not for the first time, that
15 states are extremely willing to try to find a way to
16 mitigate the harms to parties and allow the appeals to
17 proceed. I heard not a whisper, complete crickets from all
18 the objecting parties with respect to engaging with us on
19 that point. And we can't do it by ourselves.

20 THE COURT: I know you can't do it by yourself,
21 but you can't do it without Maryland and the U.S. Trustee,
22 too. And they're not willing to do that. So, I mean, it's
23 good for your two clients, but it would be a waste of time
24 if they are not prepared to do it. And I took away from
25 their candid comments that they aren't.

1 MR. GOLD: Okay. We will review the issue with
2 them, Your Honor.

3 THE COURT: Okay.

4 MR. GOLD: Thank you for that comment.

5 THE COURT: If they were, that would be great.
6 But that's not the record before me.

7 MR. GOLD: Okay. Thank you, Your Honor. I have
8 no further comments.

9 THE COURT: Okay. All right. I have before me
10 three motions for a stay pending appeal, a first day motion
11 by the United States Trustee for a stay pending appeal of
12 two orders, the Court's order confirming the Twelfth Amended
13 Chapter 11 Plan in these cases, and secondly, the Court's
14 so-called Advance Order permitting the Debtors to take
15 certain procedural steps and spend a relatively modest
16 amount of money to be more ready to effectuate the
17 transaction under the plan if and when the effective date
18 occurs.

19 The other two motions are first by the states of
20 Washington and Connecticut, and second by the State of
21 Maryland, which seek a stay pending appeal over the
22 confirmation order.

23 Three other appellants have joined in one or the
24 other of those motions, and in respect of one of them have
25 supplemented the joinder to some extent. So Mr. Bass has

1 joined in the other motions, although it is clear to me both
2 from his filing and his remarks today that his focus really
3 was not on a stay pending appeal of the confirmation order --
4 - he hasn't joined in or appealed the advance order -- but
5 rather to have the briefing schedule and hearing schedule
6 with respect to his appeal delayed by the district court.
7 And I have explained to him that that really is a decision
8 for the district court to make.

9 I also have a motion and a joinder by certain
10 Canadian Creditors, Municipality, and First Nations
11 Claimants that has joined in the other motions, although I
12 don't believe that they have appealed the advance order.
13 And that they primarily focus, if not exclusively focus on
14 the issues raised by the states. And I have Ms. Isaacs'
15 motion, which literally adopts the State of Washington and
16 the State of California -- I'm sorry, the State of
17 Connecticut's motion.

18 When I address the State of Washington and the
19 State of Connecticut's motion, I will also be addressing,
20 therefore, Ms. Isaacs' motion. And similarly, when I
21 address the first three motions that I mentioned, I will be
22 addressing the Canadian claimants' motion except when I
23 briefly address their unique issues on the prong in the
24 standard for evaluating motions for a stay pending appeal,
25 focusing on the need for a strong showing that the movant is

1 likely to succeed on the merits of the appeal.

2 The movants have the burden of proof with respect
3 to their motions for the stay pending appeal, and that has
4 been characterized as a heavy one. And the grant of a stay
5 pending appeal has been characterized as extraordinary
6 relief. See In re General Motors Corp., 409 B.R. 24 (Bankr.
7 S.D.N.Y. 2009 with regard to the first point, and In re
8 Sabine Oil & Gas Corporation, 551 B.R. 132, 142 (Bankr.
9 S.D.N.Y 2016) on the second point.

10 The grant of a stay pending appeal is an exercise
11 of judicial discretion dependent on the circumstances of a
12 particular case, id Sabine Oil, 548 B.R. 681 and In re
13 General Motors, 409 B.R. 30. They are, again, treated as an
14 exception, not the rule, and are granted only in limited
15 circumstances, In re Brown, 2020 WL 3264057, at *5 (Bankr.
16 S.D.N.Y. June 10, 2020).

17 To satisfy its burden to obtain a stay pending
18 appeal, the movant needs to establish a proper balance in
19 its favor of the following four factors; whether the movant
20 has made a strong showing that it is likely to succeed on
21 the merits, whether the movant will be irreparably injured
22 absent a stay, whether a stay will substantially injure the
23 other parties interested in the proceeding, sometimes
24 referred to as the assessment of the balance of harms, and
25 four, where the public interest lies. See Nken v. Holder,

1 556 U.S. 418, 434 (2009) and Kelly v. Honeywell Int'l, Inc.,
2 933 F.3d 173, 188-184 (2d Cir. 2019).

3 The Honeywell case is an important gloss on the
4 first factor requiring a strong showing that the movant is
5 likely to succeed on the merits of the underlying appeal by
6 its focus on the need for that showing to show a fair ground
7 for litigation. A number of courts have phrased this as a
8 showing regarding the success on appeal somewhere between
9 possible and probable. Again, see Brown, 2020 WL 3264057 *7
10 and Sabine Oil, 548 B.R. 683, 684, which also notes in Judge
11 Chapman's opinion that the probability of success that must
12 be demonstrated can be viewed as inversely proportional to
13 the amount of irreparable injury that the movant will suffer
14 absent of the stay. In other words, more of one excuse is
15 less of the other, id at 684.

16 I will briefly address the first prong, which,
17 along with the prong of a showing of irreparable harm, are
18 the two factors that are viewed as most critical in the
19 analysis, Nken v. Holder, 556 U.S. 434. See also Uniformed
20 Fire Officers Association v. De Blasio, 973 F.3d 41-48 (2d
21 Cir. 2020).

22 This analysis of the merits by the court that
23 issued the order upon which the appeal is based is one that
24 places that court in the position of looking at its ruling
25 objectively as one would from the outside to see whether

1 there are fair grounds for litigation of the appeal. And
2 depending on the strength, or lack thereof, of a showing of
3 irreparable harm, perhaps more than that to warrant a stay.

4 Obviously the Court's determination of the issues
5 before it that are the subject of the movants' appeals was
6 carefully undertaken by me after a lengthy trial and set
7 forth in a 155-page written memorandum of decision. The
8 issues on appeal I believe do not all warrant a finding of a
9 strong showing likely to succeed on the merits or of likely
10 success on the merits somewhere between possible and
11 probable. Again, recognizing the sliding scale for this --
12 for purposes of this stay pending appeal determination.

13 Certain of the issues raised I believe are clear
14 under applicable Second Circuit law and a real stretch by
15 the appellants. Those include the so-called due process
16 argument, the so-called 524(e) argument, the analysis of the
17 merits of the settlement, and the argument that the Second
18 Circuit should change its law from how it is currently
19 articulated.

20 As far as the due process argument is concerned,
21 the United States Trustee has argued that the plan, with its
22 injunction of certain third-party direct claims against the
23 released parties, violates the due process clause by taking
24 those claims without the right to a hearing and a trial,
25 citing and relying on large measure upon Ortiz v. Fibreboard

1 Corp., 527 U.S. 815 (1999).

2 As far as the notice point is concerned, I made
3 extensive factual findings as to the notice that was
4 provided and was received by those who are creditors of the
5 Debtors. I will note my view that the plan itself and the
6 underlying claims that have been identified by the U.S.
7 Trustee apply to release or enjoin direct third-party claims
8 that overlap with in a highly meaningful way claims of the
9 Debtors or against the Debtors. And therefore, such notice
10 would be sufficient. I will note further that there is no
11 absolute right to a trial beyond the trial that the court
12 held as to the bona fides of the settlement with its right
13 to object, which was preceded by a right to vote on the plan
14 and to object to the plan generally, including the
15 classification scheme set forth in the plan.

16 That scheme and the right to vote and the review
17 by the bankruptcy court clearly distinguishes the bankruptcy
18 process as recognized by the Second Circuit that would
19 encompass certain types of releases of third-party claims
20 from the fact pattern and concerns raised by the Supreme
21 Court in Ortiz, where there was a concern that those that
22 would be bound by a non-opt-out settlement were not
23 adequately represented because of conflicts of interest,
24 where there was no vote, and no plan process including the
25 right to object to classification and voting, and ultimately

1 the court's review of the proposed settlement in that
2 context.

3 The Supreme Court largely recognized this fact in
4 Ortiz itself, recognizing that its general view as to due
5 process was qualified by a special remedial scheme, quoting
6 Martin v. Wilks, 490 U.S. 755, 762, Note 2 (1989), which
7 specifically referenced the bankruptcy legislative scheme.

8 I believe the bench ruling sufficiently dealt with
9 the inapplicability of the 524(e) argument, including citing
10 well-reasoned opinions by other circuit courts on it.

11 As a factual matter, I will note that the U.S.
12 Trustee took no discovery in connection with the
13 confirmation hearing or generally in the case as a whole and
14 largely played the role of a kibitzer on the evidence during
15 the trial, offering no witnesses of its own. And to the
16 extent it does, or the U.S. Trustee does object to the
17 analysis of the merits of the settlement, I find it highly
18 unlikely that that analysis would prevail on appeal.

19 As far as the moving states' arguments on the
20 merits that overlap with the ones that I just raised, I
21 won't address them again. But I will note that I believe I
22 comprehensively dealt with their classification arguments
23 and their voting arguments and that the evidence in my
24 analysis of recoveries under 1129(a)(7) clearly establishes
25 that the plan would satisfy the best interest test even if

1 one considered the rights that they were being required to
2 give up to pursue third-party claims against the released
3 parties, although that was an alternative holding.

4 The U.S. Trustee's and the states' other
5 arguments, however, I believe if there was a strong showing
6 of irreparable harm, would satisfy the first prong of their
7 burden of proof. The U.S. Trustee is clearly wrong that
8 personal injury claimants and other creditors are receiving
9 nothing on account of their third-party claims against the
10 released parties. It is clear that it is the settlement of
11 those third-party claims that enables the entire plan and
12 the distributions under the plan, without which they would
13 receive in my view as I found based on the analysis of the
14 evidence, including the rights of the United States in the
15 DOJ settlement to a super-priority claim and the limited
16 recoveries that they would have in the free-for-all
17 litigation that would ensue, literally no recovery.

18 The plan treats personal injury claims as
19 receiving a distribution based on the liquidation of the
20 underlying claim against the Debtor. That does not mean
21 that the personal injury claimants are not receiving value
22 on account of their third-party claims, but it reflects I
23 believe that their third-party claims are overlapping, and
24 though entitling them perhaps to a direct recover as opposed
25 to a recovery through the Debtor, viewed as derivative

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1 claims under the analysis by the circuit in the Tronox case
2 as well as by other courts that have distinguished claims
3 that may be direct but are asserted because of harm to all
4 of a debtor's creditors as opposed to individual creditors
5 as discussed in the Tronox case, which is referenced and
6 discussed at some length in my opinion. See also the
7 discussion in Deutsche Oel & Gas S.A. v. Energy Capital
8 Partners Mezzanine Opportunities Fund A, LP, U.S. Dist.
9 LEXIS 181000 (S.D.N.Y. September 20, 2020), and In re CIL
10 Limited, 2018 Bankr. LEXIS 354 (Bankr. S.D.N.Y. February 9,
11 2018).

12 As I also noted in the memorandum in support of
13 the order, the circuit has now made it clear,
14 notwithstanding the citation by the U.S. Trustee of Johns
15 Manville Corp. v. Chubb Indemnity Insurance Company, 606
16 F.2d 135, 153-154 (2d. Cir. 2010), that the evaluation is
17 only in respect of in rem claims. As stated and discussed
18 at length in the Quigley case, the Court's power extends to
19 in personam claims as long as the factors laid out by the
20 Circuit are satisfied after a searching inquiry by the
21 Court.

22 However, those factors have been the subject of
23 different analyses over the years as to what is properly
24 subject to an injunction of a direct third-party claim. And
25 I believe that it is that issue, i.e. how those claims are

1 cabined between the clear instance where they should not be
2 enjoined as discussed in the Manville III opinion, and where
3 they should be.

4 I have tried to narrow those so that it does
5 reflect in the plan that such claims are only those where
6 there is a substantial or an entire overlap. And I believe
7 that the factual record of the claims that the U.S. Trustee
8 purports to be protecting reflects just that overlap, i.e. a
9 lack of direct fraud as opposed to allegations of extensive
10 control over an enterprise that itself engaged in fraud or
11 other violations of consumer law which would apply to all
12 creditors, to protect all creditors of the debtors.

13 While I believe there is less of a fair ground for
14 litigation on the second point which is raised only by the
15 moving states, namely that notwithstanding there being any
16 specific protection for them in the Bankruptcy Code, their
17 status as a governmental entity takes them out of the reach
18 of this particular plan injunction. Notwithstanding that,
19 the injunction at this point given the creditors' other
20 agreements applies just to the creditors' right to pursue
21 monetary claims against the third parties.

22 The state creditors have argued that the deterrent
23 effect of pursuing those claims is a valid governmental
24 interest, which to some extent it is. But I believe that it
25 is going far too far to state that that interest requires

1 them to decide whether there would be a trial or not of such
2 claims where they overlap with the claims against the
3 Debtor's estate and by the Debtor's estate, as I believe
4 they are cabined under the plan.

5 I will note that the moving states have at times
6 argued that that public interest extends to their right to
7 take discovery and engage in a trial, but I will also note
8 that they have touted in this motion the benefits of the so-
9 called national settlement in the multi-district litigation
10 in which two of the three of them are parties where there
11 has been no trial by them, and I believe far less discovery
12 that occurred in this case, that they would have and did
13 have direct access to. But with that also I believe that
14 that package of issues is an issue for consideration
15 appropriately under the first prong of the test for
16 obtaining a stay pending appeal.

17 The other most critical factor is whether the
18 movant will be irreparably injured absent the stay. For all
19 intents and purpose, although the movants have each
20 attempted to argue other injuries, the injury that they
21 posit as an irreparable injury is the risk that during the
22 course of their appeals, the plan would be so far
23 consummated that the appeals would become equitably moot.

24 The equitable mootness doctrine is at one level
25 fairly well established in the Second Circuit, although

1 throughout the country there is a wide variation on how
2 courts look at it. I say at one level because the courts
3 have also made it clear that, "The doctrine is deployed in a
4 pragmatic and flexible fashion and must be responsive to the
5 specific factors presented in a particular case ultimately
6 to focus on as a prudential matter whether a court should
7 dismiss a bankruptcy appeal when even though effective
8 relief could conceivably be fashioned, implementation of
9 that relief would be inequitable." See Beeman v. BGI
10 Creditors' Liquidating Trust (In re BGI, Inc.), 772 F.3d
11 102, 107-08 (2d Cir. 2014) and GLM DWF Inc. v. Windstream
12 Holdings Inc. (In re Windstream Holdings Inc.), 838 Fed.
13 Appx. 634 (2d Cir. Feb. 18, 2021). Where a plan has been
14 substantially consummated, the circuit presumes that an
15 appeal is equitably moot. And in that circumstance, a party
16 seeking to overcome that presumption may do so only by
17 demonstrating that five factors are met. But that of course
18 is only where, again, a plan has been substantially
19 consummated under the Bankruptcy Code, id In re Windstream
20 Holdings Ind., 838 Fed. Appx. 634, 636.

21 The course by a vast majority have held that the
22 possibility of equitable mootness standing alone does not
23 constitute irreparable harm. Rather, it is a form of
24 prejudice which with some other consideration can constitute
25 equitable harm. Again, taking into account the equitable

1 nature of the request for relief, i.e. the stay pending
2 appeal, it would seem to me that that other factor can be
3 any one of the three other factors, i.e. the very importance
4 and seriousness of the appeal on the merits and the harm or
5 lack of harm to other parties and/or the public interest,
6 which includes both a sense of the importance of the
7 finality of bankruptcy plans where they are complicated and
8 involve delicately-negotiated and extensively-reviewed
9 compromises as against the public interest in literally
10 getting an appeal right beyond the trial court
11 determination. See for example the discussion of this topic
12 in In Re Adelphia Communications Corp., 361 B.R. 337, 347-
13 348 (S.D.N.Y. 2007) and In re St. Johnsbury Trucking
14 Company, 185 B.R. 687 (S.D.N.Y. 1995), both of which cases
15 considered some balancing of the other factors in addition
16 to the risk of equitable mootness.

17 And on the other side of the equation, the
18 discussion in In re Windstream Holdings Ind., 2020 U.S.
19 Dist. LEXIS 167183 (S.D.N.Y. August 3, 2020) where the
20 district court makes the clearly correct point that merely
21 invoking equitable mootness as the appellants have done
22 here, a risk that is present in any post-confirmation appeal
23 of a Chapter 11 plan, is not sufficient on its own to
24 demonstrate irreparable harm. That's id at Page 7 quoting
25 In re Calpine Corp., 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y.

1 January 24, 2018). See also *In re W.R. Grace & Company*, 475
2 B.R. 34 -- I'm sorry, I have the wrong cite. It's at Pages
3 207 through 08 (D. Del. 2012), affirmed 729 F.3d 332 (3rd
4 Cir. 2013).

5 In the cases where courts have taken seriously the
6 risk of equitable mootness, they have either, as in the
7 *Adelphia* case, had grave doubts about the merits of the
8 appeal and believe that they needed to be addressed, or the
9 harm to the other parties was offset by the need for an
10 appeal where there was other irreparable harm besides
11 mootness that would occur if the appeal were not heard.

12 As for the mootness issue as irreparable harm and
13 irreparable harm in general, the allegation of irreparable
14 harm and the showing of it must be neither remote nor
15 speculative, but actual and imminent. The possibility of
16 irreparable harm is too lenient. *Nken v. Holder*, 556 U.S.
17 434-435 and *In re Sabine Oil & Gas Corp.*, 551 B.R. 143.

18 Here, the appellants are in two different camps as
19 far as the relief that they are seeking from me. The U.S.
20 Trustee has clearly asked for a stay pending appeal
21 throughout all of the appeals, i.e. through potentially
22 determination of its appeal by the Supreme Court. It has a
23 fallback position in which it asks for a stay through the
24 district court determination on the appeal plus some
25 additional time.

1 The moving states I think are much more focused on
2 a short-term stay. And based on their remarks during oral
3 argument, I believe they would confine their motion to such
4 a request.

5 As I stated during oral argument, and I won't
6 repeat the cases that I cited, it seems to me that
7 Bankruptcy Rule 8025 effectively limits the bankruptcy
8 court's ability to issue a stay pending appeal of a district
9 court's order. The provisions of Rule 8007 and Rule 8025 do
10 not entirely mesh, as noted by the district court in Credit
11 One Bank N.A. v. Anderson (In re Anderson), 560 B.R. 84, 88
12 (S.D.N.Y. 2016). But as I've previously cited, there are
13 plenty of cases where bankruptcy courts have limited their
14 stays because of Rule 8025 up to the date of the district
15 court's ruling.

16 I believe that is appropriate here not only
17 because of Rule 8025, but also because of the distinctly
18 different factual considerations underlying a request for a
19 stay pending appeal in these appeals and in these cases for
20 a stay pending appeal through the district court's ruling
21 and a stay thereafter.

22 The district court has made it clear that it is on
23 a fast track to determining the appeal, which it will hear
24 oral argument on at the end of November and may well rule on
25 by the end of the first week of December. Moreover, the

1 appellees have stipulated and will be prepared to add to
2 that stipulation based on the record at oral argument that
3 they will not cause the effective date to occur, that is the
4 effective date of the plan, until the earlier of the
5 district court's ruling, which under Rule 8025 and results
6 in, unless the district court orders otherwise, a 14-day
7 stay and December 31.

8 They have also stipulated that they will not argue
9 equitable mootness to a subsequent appellate court, whether
10 that's the Second Circuit or the Supreme Court based on
11 actions taken prior to the effective date of the plan,
12 including in respect of the advance order.

13 Based on my review of the plan in addition to that
14 stipulation, it is highly unlikely that the plan would
15 permit any actions to be taken prior to the effective date
16 that would come anywhere close to the types of transactions
17 that give rise to equitable mootness under the law of the
18 Second Circuit. That includes coming anywhere close to
19 achieving substantial consummation of the plan under the
20 Bankruptcy Code.

21 The appellees have further stipulated that they
22 will give the appellants, including the movants, 14 days'
23 notice of their actual efforts to cause the effective date
24 to occur, of the actual effective date that is, or the
25 projected effective date.

1 Finally, they have stated -- and again, this would
2 be a condition for my order -- that they would render the
3 movant's equitable mootness arguments moot by agreeing that
4 the hearing on the sentencing of the debtors under the DOJ
5 settlement agreement, that that hearing would be no earlier
6 than December 31, which it is clear is the actual date that
7 will be one where there is ample notice, clearly more than
8 14 days' notice, to the appellants, including the moving
9 parties here.

10 Given all of the foregoing and the burden of proof
11 as to irreparable harm that the movants have, I conclude
12 that they have not established irreparable harm with respect
13 to a stay which I believe is the only appropriate stay that
14 I could grant, which is to the date of the district court
15 ruling and a reasonable outside date wherein there would be
16 sufficient notice for the movants to renew a stay motion in
17 the district court.

18 The Debtors have suggested December 31 for that
19 outside date, and it has been suggested to me by the movants
20 that that date, being New Year's Eve and during the holiday
21 season, may place an undue burden on the district court in
22 scheduling a stay hearing, and to a lesser extent a burden
23 on the parties. However, again, it appears more likely to
24 me, although of course this is entirely up to the district
25 court, that the district court will rule before December 31.

1 And I believe that the scheduling issue can be dealt with by
2 saying the earlier of the district court's ruling and
3 December 31 or such later date. I'm sorry, subject to the
4 district court's calendar. So if the district court is not
5 available at or around December 31 to hear a potential
6 renewed stay motion depending on the district court's ruling
7 and when that occurs, then it would be the later date for
8 the district court to hold the hearing.

9 Clearly, the parties here have already prepared
10 their stay motions. Indeed, the U.S. Trustee prepared four
11 of them, which are all in my pleading binder. And we have
12 had an extensive record for this hearing. I believe under
13 those circumstances it's not a burden for them if the
14 district court can schedule a stay hearing if they decide to
15 make a stay motion after the district court's ruling by the
16 outside date of December 31 if the district court had not
17 ruled by then.

18 Otherwise, the appellate process would be governed
19 by Rule 8025. And accordingly, I believe that a key element
20 on the conditions that I just stated for the movants
21 prevailing on the request for a stay pending appeal has not
22 been met.

23 I will also address, however, the last two prongs
24 that the movants would have to show, namely that there is no
25 substantial injury to other parties interested in the

1 proceeding and where the public's interest lies.

2 As far as there being no substantial harm to other
3 parties interested, the record here is clear and I believe,
4 frankly, uncontroverted that there is to the contrary
5 substantial harm to the Debtor's creditors, the vast
6 majority of whom have either not objected to the plan and/or
7 voted in favor of the plan affirmatively in each instance,
8 the vast majority that is.

9 After the Debtors are ready to have the effective
10 date of the plan occur, and it appears to me that that would
11 not be realistically before December 31, although perhaps a
12 week before they could be ready, after that date when they
13 are ready, every day that they do not implement the
14 effective date which starts the process of liquidating
15 personal injury claims and making distributions on them and
16 making the initial distributions for abatement purposes
17 seriously causes harm to the creditors. It is clear to me
18 that the personal injury creditors bargained for a rapid
19 payout, which is reflected not only in their bargaining for
20 a fixed, upfront sum of several hundred million dollars, but
21 also the procedures they've adopted for consistent with due
22 process and the burden of proof a streamlined option to
23 liquidate one's proof of claim.

24 Similarly, the roughly up to a billion dollars
25 minus the funds going to the personal injury creditors would

1 be going out shortly after the effective date through 2023
2 for abatement purposes, as well as the \$225 million payment
3 to the United States, which although not specifically
4 earmarked for abatement purposes, United States has
5 represented the vast majority of which will go to hospitals
6 and other care facilities. This is amply testified to by
7 Mr. Guard as far as the payments are concerned at Paragraphs
8 9 through 13 of his declaration as well as at Paragraphs 7
9 through 9 and 12 through 21 and in the summary at Paragraph
10 25 of Mr. DelConte's declaration. That declaration also
11 address in Paragraph 22 and 23 the funding of Newco and
12 setting it up as a public benefit company to focus on
13 developing products at a reasonable price to combat the
14 opioid crisis.

15 As Mr. Guard eloquently summarized, many states
16 have been litigating these issues since, well -- I'll quote
17 him, because it's actually quite telling -- for as long as
18 five years before the commencement of the bankruptcy case in
19 addition to the two years of this bankruptcy case. I
20 believe that that length of time was necessary to satisfy
21 the due process Iridium and Metromedia factors as well as to
22 negotiate the intricate intercreditor deals in the plan.
23 The additional time of a stay pending appeal after the
24 district court's ruling is necessary only to have further
25 appeals. There is nothing else that would hold up the

1 payment of the money.

2 As Ms. Juaire and Ms. Trainor eloquently have
3 testified, that payment is, if made, to be put to use both
4 for the immediate needs of the individual victims and for
5 abatement purposes at a time when every dollar counts. And
6 as time passes, the problem only gets worse.

7 As testified to by Mr. Guard and Mr. Jorgenson,
8 opioid deaths have been increasing over the last two years
9 at a very disturbing level, roughly 30 percent nationally,
10 such that in the last year of March to March, roughly 200
11 opioid-related overdose deaths occur each day.

12 I agree with the states of Washington and
13 Connecticut that if the parties could all agree that those
14 initial distributions could be made and the parties who are
15 appealing would take the risk on equitable mootness with
16 regard to those distributions, that would be all to the
17 good. But the U.S. Trustee and the State of Maryland do not
18 seem to be prepared to agree to such a resolution to get
19 money out promptly.

20 So on the one hand, we have that clear, tangible
21 harm. On the other hand, post the date when the Debtors
22 would be ready to go effective, which, again, would be at
23 the end of this year, we have tangible harm as described in
24 the Juaire, Trainor, Guard and Jorgenson declarations,
25 contrasted with the legitimate but non-economic harm of

1 having extra layers of appeal.

2 The public interest factor in some respects
3 dovetails with the foregoing analysis. The U.S. Trustee
4 states that it is protecting the interests of those who did
5 not object to the plan but did not affirmatively accept it
6 and those who did object to the plan. It has not, however,
7 provided any information to me that would indicate that
8 those parties would effectively be able to pursue their
9 claims against the released parties to recover anything and
10 would not -- and in addition would not recover any amounts
11 from the Debtors.

12 The vindication of that public policy, i.e.
13 protecting the minority, at some point -- and I believe that
14 point comes soon after the Debtors are ready for the
15 effective date, although maybe with enough time to have an
16 expedited appeal to the circuit depending on the seriousness
17 of the issues on appeal -- is sufficient to carry the day on
18 the public policy point. But those issues can be addressed
19 by the district court if there is a motion for a stay after
20 its ruling.

21 In light of its assessment of all four factors,
22 including the first factor, the likelihood of success on
23 appeal, and with the benefit of this record which, again, is
24 extensive with extensive evidence offered by the party that
25 doesn't have the burden of proof on this issue, the

1 objectants, with no evidence offered for what I'll refer to
2 as the longer stay issue of the balance of harms by the
3 movants.

4 The other public interest factor I have been told
5 is the deterrence factor. I will note, however, that at
6 some point the public's desire to get paid may well outpace
7 that deterrence factor, particularly where, again, the issue
8 is one simply of a fight over money and the movants can
9 simply not close their eyes to the fact that their
10 litigation alternatives are ones where they already with
11 regard to other defendants that they have pursued have
12 resulted in settlements rather than trials and where the
13 effect of a lengthy stay would prevent the release of the
14 document repository which can be used not only by the public
15 and academics, but also to actually fight the remaining
16 trials and litigation that's pending against other parties.

17 Counsel for the Ad Hoc Committee of Personal
18 Injury Claimants has suggested that I require at this point
19 the posting of a bond by the states and the non U.S. Trustee
20 appellants. Of course the posting of a bond to protect the
21 appellees from the adverse effects of a stay is the norm
22 rather than the exception. And even where the Court has
23 believed that there are not just possible but quite probable
24 issues on the merits, it has required the posting of a bond,
25 and a substantial bond pending appeal. See *In re Adelphia*

1 Communications Corp., 361 B.R. 337.

2 The U.S. Trustee I believe correctly points out
3 that Rule 8007(d) exempts the federal government from a bond
4 requirement. And while that language is not entirely clear,
5 I believe that that is the case. However, that does not
6 help the U.S. Trustee on the issue of the harm to other
7 parties or the balancing of the harms since it offers
8 nothing in return for the risk that it will have been wrong
9 and have pursued a lengthy appeal process that results in
10 the substantial delay of payments that literally save lives
11 and families.

12 8007(d) says nothing about any other entity,
13 including any other governmental entity being exempt from
14 the bond requirements. And in fact, there is meaningful
15 caselaw on that point or under the analogous Federal Rule of
16 Civil Procedure 62. The fact that state courts don't impose
17 a bond on other states I believe is irrelevant, as noted by
18 more than one of the objectors. A federal statute including
19 the Bankruptcy Code as interpreted by the bankruptcy courts
20 will defeat a state's interest in enforcing its law and in
21 protecting appellees if in fact it obtains a stay. The
22 basic principle was set forth in *Butner v. United States*,
23 440 U.S. 45, 48 (1979). And, in fact, in other cases bonds
24 have been imposed on states. I cited one of those during
25 oral argument, *Lightfoot v. Walker* 797 F.2d 505 (7th Cir.

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1 1986), a decision by Judge Posner. See also Cayuga Indian
2 Nation of New York v. Pataki, 188 F. Supp. 2d 223 (S.D.N.Y
3 2002) and PAO Tatneft v. Ukraine, 2021 U.S. Dist. LEXIS
4 102179, 6-7 (D.D.C. June 1, 2021). That latter decision
5 also is authority for requiring the Canadian entities to
6 post a bond.

7 Again, I do not believe a bond is required with
8 respect to the order that I will grant, which denies the
9 stay request. But I am denying the U.S. Trustee's request
10 for a broader stay, i.e. one that would last through the
11 entire appellate process because it is not posting a bond.
12 And I would deny a similar request by the movant states
13 because they have not offered to post a bond where it is
14 clear that there would be substantial harm to third parties
15 occasioned by delay after the date when the Debtors have
16 acknowledged they will, and only by that date, be ready to
17 go effective with their plan.

18 Counsel for the Ad Hoc Committee of Personal
19 Injury Claimants has also suggested that I oppose additional
20 reciprocal conditions on my not granting the motion,
21 reciprocal to the conditions that I am imposing on the
22 debtors and the other plan proponents. They would basically
23 go to any efforts by the movants to delay emergence other
24 than of course through the appellate process. That would
25 include continuing their commitment to an expedited

1 appellate process, not seeking to adjourn the sentencing
2 hearing before the district court in New Jersey and the
3 like.

4 I am not prepared to impose those conditions.
5 However, I will reserve the appellee's right to revisit
6 those conditions if such delaying tactics are undertaken. I
7 don't believe they will be because I believe they are
8 antithetical to the stated goals of the movants to expedite
9 the appeal process and get money out to claimants. But if
10 that proves not to be the case, then I will lift the
11 conditions that I am imposing as a quid pro quo to my not
12 granting the stay motions.

13 I noted that the Canadian claimants' motion
14 essentially rides along on the mootness point with the other
15 three motions that I have described. On the merits point,
16 it addresses arguments unique to the Canadian claimants
17 based on their assertions that they are sovereign entities
18 and therefore that their rights cannot be constrained. I
19 have clearly disagreed with that in my confirmation ruling.

20 I will also note that the objections to the
21 Canadian claimants' points on this argument are well taken.
22 Canadian claimants, not all of them, but Canadian claimants
23 in their group have filed proofs of claim in these cases on
24 behalf of all of the claimants, which would subject them to
25 the court's jurisdiction. Moreover, the claimants' rights

1 are not specifically protected under the Bankruptcy Code.
2 They fall into the waiver of sovereign immunity for
3 governmental entities.

4 And again, I believe that the comprehensive
5 bankruptcy scheme recognized by not only Ortiz but also
6 Butner and the circuit in Manville IV, 606 F.3d 135, all
7 contemplate that those types of rights can be constrained by
8 the Court even where they pertain to or limit the ability to
9 pursue claims that are direct claims, at least where those
10 direct claims overlap with claims assertable by all
11 creditors and based on actions that are primarily actions
12 through the Debtors.

13 So I will look for an order consistent with my
14 ruling. I will not require a notice of when the Debtors are
15 asking for a hearing date, but only a notice of the hearing
16 date (indiscernible) the hearing date. I will not extend
17 the outer date for their condition beyond December 31, but
18 that will be subject to the district court's schedule,
19 obviously tying into the commitment that has already been
20 given by the appellees of a 14-day notice of the actual
21 effective date, which is all tied to giving the movants time
22 to renew their motion for appeal -- I'm sorry, for a stay
23 pending appeal, excuse me.

24 All right, are there any questions on what the
25 order should say?

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1 MR. FOGELMAN: Your Honor, this is Larry Fogelman
2 on behalf of the United States. May I make one comment?

3 THE COURT: Okay.

4 MR. FOGELMAN: It's really -- it's just a
5 clarification of one of the comments that Your Honor made.
6 While it's true that almost all of our civil recoveries for
7 the federal healthcare agencies that do help treat opioid
8 use disorder, I just -- and that includes the \$225 million
9 from the Sackler settlement which will be a civil claim.
10 And that was addressed in the letter that we filed with the
11 Court. I just want to clarify that the \$225 million asset
12 forfeiture recovery under the plea agreement, that's
13 required by statute to go to the asset forfeiture fund
14 (indiscernible). I think Your Honor had said that the asset
15 forfeiture amount goes to the federal healthcare agencies.
16 So I just wanted to make that clarification for the Court.

17 THE COURT: Okay. Thank you.

18 MR. FOGELMAN: Thank you.

19 THE COURT: All right. So are there any questions
20 on the order? No?

21 MR. KAMINETZKY: We will do our best, Your Honor.
22 I think we understand.

23 THE COURT: I don't want the parties to spend an
24 enormous amount of time negotiating this order. If there is
25 a disagreement about what the parties think I said, you

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1 should promptly send me the alternative proposed orders with
2 the second one blacklined to show the changes and I'll enter
3 the one that I believe is consistent with my ruling.

4 MR. KAMINETZKY: We will do so, Your Honor.

5 THE COURT: Okay, very well. Thank you.

6 (Whereupon these proceedings were concluded at
7 6:32 PM)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

6 *Sonya M. Ledanski Hyde*

7
8 Sonya Ledanski Hyde

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20 Veritext Legal Solutions

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23 Mineola, NY 11501

24

25 Date: November 12, 2021

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